SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 443

HUGHES TOOL COMPANY, ET AL., PETITIONERS,

vs.

TRANS WORLD AIRLINES, INC.

No. 501

HUGHES TOOL COMPANY, PETITIONER,

vs.

TRANS WORLD AIRLINES, INC., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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[Stamp—Received—Docket Section—Dec 23 11-12 AM '60 —Civil Aeronautics Board]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the matter of the application of

HUGHES TOOL COMPANY

for approval of the acquisition of control of

Trans World Airlines, Inc.

MOTION OF TRANS WORLD AIRLINES, INC. FOR APPROVAL OF TRANSACTIONS IF SUCH APPROVAL IS NECESSARY

Communications with respect to this document should be sent to:

THOMAS K. TAYLOR
Vice President
Trans World Airlines, Inc.
1000—16th Street, N.W.
Washington 6, D. C.

and

CHADBOURNE, PARKE, WHITESIDE & WOLFF
Attorneys for Trans World Airlines, Inc.
25 Broadway
New York 4, N. Y.

December 22, 1960

[fol. 4295]

BEFORE THE
CIVIL AERONAUTICS BOARD
Docket No. 1182

In the matter of the application of

HUGHES TOOL COMPANY

for approval of the acquisition of control of
Trans World Airlines, Inc.

MOTION OF TRANS WORLD AIRLINES, INC. FOR APPROVAL OF TRANSACTIONS IF SUCH APPROVAL IS NECESSARY

TRANS WORLD AIRLINES, INC. (herein referred to as "TWA") respectfully requests the Board to enter an order herein amending its Order No. E-15561, issued July 21, 1960, modifying the restrictions imposed on transactions between TWA and HUGHES TOOL COMPANY (herein referred to as "Hughes") if any such amendment is necessary in order to permit the consummation of the proposed financing for TWA, and to grant such other approvals under Sections 408 and 409 of the Act (or exemptions therefrom) as the Board may consider necessary in connection therewith.

1. TWA's motions dated May 6, 1960 and July 1, 1960 outlined proposed temporary and definitive financing arrangements to be entered into by TWA, including the sale of secured obligations to banks and institutional investors, the sale of junior securities to stockholders, the issuance of subordinated obligations to Hughes and other proposed transactions between TWA and Hughes connected with TWA's acquisition of jet equipment.

2. The proposed transactions between TWA and Hughes relating to TWA's acquisition of jet equipment and the financing thereof were approved by Orders of the Board

[fol. 4296] dated June 23, 1960 and July 21, 1960 (Nos. 15430 and 15561).

3. Pursuant to the agreement dated May 9, 1960 between TWA and Hughes, the form of which was attached as Exhibit A to TWA's motion dated May 6, 1960, providing for the acquisition by TWA from Hughes and from the manufacturers of a fleet of Boeing Model 707-131, Boeing Model 707-331 and Convair Model 880 jet aircraft, spare engines, spare parts, equipment and provisioning therefor (subject to the completion of either temporary or definitive financing arrangements completely satisfactory to TWA), and pursuant to agreements between TWA and Hughes dated April 1, 1960 and April 14, 1960 (covering transactions approved by Order No. E-15430), TWA has acquired 2 Boeing Model 707-131 aircraft, 8 Boeing Model 707-331 aircraft, 1 Convair Model 880 aircraft and spare engines, spare parts, equipment and provisioning for Boeing Model 707-131, Boeing Model 707-331 and Convair Model 880 aircraft. Such acquisitions have been facilitated through temporary debt financing of TWA, guaranteed by Hughes, and the issuance of subordinated obligations by TWA to Hughes, in the manner outlined in TWA's motion of May 6, 1960.

4. The definitive financing outlined in TWA's motions of May 6, 1960 and July 1, 1960 has not yet been accomplished. It is now proposed that such financing be accomplished and that the first closing under this financing be held on December 29, 1960. The terms of this financing and of the transactions between TWA and Hughes relating thereto are to be substantially the same as those set forth in TWA's motions of May 6, 1960 and July 1, 1960, approved by orders of the Board dated June 23, 1960 and July 21, 1960. Among the changes, which it is believed do not affect the substance of the transaction, are the deposit [fol. 4297] by Hughes at the time of the first closing under the definitive financing arrangements, of Hughes' TWA stock, in the voting trust (which was previously to be established only under certain conditions) and the granting to Hughes by the purchasers of TWA's secured obligations of options to acquire such obligations from the holders thereof under certain conditions.

Attached hereto are copies of the following proposed agreements reflecting changes in the drafts of documents relating to TWA's long-term financing program submitted to the Board with TWA's motion of July 1, 1960:

(a) An agreement (in substantially the form attached hereto as Exhibit A) between TWA, Hughes and the prospective holders of the senior debt of TWA. This agreement, among other things, reflects a reduction in the total amount of senior debt (Notes) to be issued by TWA from $168,800,000 to $165,000,000, and changes in the maturity dates of the Notes, caused by the postponement of the financing and the resulting increased depreciation on the flight equipment to be mortgaged to secure the Notes. This proposed agreement is a revision of the agreement attached as Exhibit B to TWA's motion of July 1, 1960.

(b) A Final Accounting and Debenture Purchase Agreement between TWA and Hughes (in substantially the form attached hereto as Exhibit B). This agreement, among other things, redesignates the particular 20 Convair 880 airplanes to be acquired by TWA, without changing the total number of aircraft to be so acquired. This proposed agreement is a revision of the agreement attached as Exhibit C to TWA's motion of July 1, 1960.

(c) An agreement between TWA, Hughes and the Voting Trustees described therein (substantially in the form attached hereto as Exhibit C), providing for the deposit by Hughes in a voting trust of all shares of common stock of TWA held by Hughes. This agreement is a revision of the Voting Trust Agreement attached as Schedule A to the proposed Three Party Agreement which was Exhibit D to TWA's motion of July 1, 1960, and reflects the present proposal that such a voting trust be created prior to the consummation of the long-term financing.

(d) An Option Agreement between Irving Trust Company, as Bank Agent, The Equitable Life Assurance Society of the United States, Metropolitan Life

Insurance Company and Hughes (in substantially the form attached hereto as Exhibit D), pursuant to which Hughes would be given options, under certain conditions, to purchase the Notes to be issued under the financing program from the holders thereof (herein called the "Option Agreement").

[fol. 4298] 5. The proposed agreements referred to above do not change the substance of the transactions between TWA and Hughes outlined in TWA's motions of May 6, 1960 and July 1, 1960, approved by Order No. E-15430. The consummation of this long-term financing program is in the best interests of TWA and the public.

6. While TWA believes no further approval by the Board is necessary to enable it to consummate its proposed financing, it respectfully requests any such approval as the Board deems required.

7. Of the three Voting Trustees under the Voting Trust Agreement referred to in paragraph 4(c) hereof, Raymond M. Holliday has been appointed a Voting Trustee by Hughes. Mr. Holliday is a director of TWA and a director and officer of Hughes. Such relationships and the interlocking relationships resulting from the holding by Mr. Holliday of any other directorships and office within the system of affiliated and subsidiary companies composed of Hughes and TWA were approved by the Board under Section 409 of the Act by Order No. E-14251, dated July 22, 1959. TWA believes no further approval by the Board is necessary under Section 409 to permit Mr. Holliday to hold the position of one of such Voting Trustees.

The other two Voting Trustees are to be designated by the Notes Agent, as agent for the holders of the Notes to be issued by TWA in connection with the proposed financing.

[fol. 4299] TWA believes that no Section 409 approval is necessary with respect to the Voting Trustees, since a Voting Trustee is not an officer or director and Section 409 applies only to officers and directors of air carriers.

WHEREFORE, TRANS WORLD AIRLINES, INC. respectfully prays that the Board either (a) enter an order herein amending its Order No. E-15561 and modifying its Order Serial No. 3210, as amended, so that such order will permit the consummation of the proposed financing for TWA, if the Board finds that any such further order is required, and enter an order granting such other approvals under Sections 408 and 409 of the Act (or exemptions therefrom) as the Board considers necessary, or (b) enter an order herein determining that no such further orders are required; and grant it such other and further relief as may be appropriate.

Respectfully submitted,

/s/ THOMAS K. TAYLOR
Thomas K. Taylor
Vice President

December 22, 1960

[fol. 4300]

EXHIBIT A

AGREEMENT

AMONG

TRANS WORLD AIRLINES, INC.

AND

HUGHES TOOL COMPANY

AND

IRVING TRUST COMPANY, as Bank Agent

AND

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES and METROPOLITAN LIFE INSURANCE COMPANY

AND

CHEMICAL BANK NEW YORK TRUST COMPANY, as Trustee

under the Indenture of Mortgage dated as of December 1, 1960, from Trans World Airlines, Inc.

HUGHES FINANCING AND SUBORDINATION AGREEMENT

Dated as of December 1, 1960

[fol. 4301] AGREEMENT dated as of December 1, 1960 among TRANS WORLD AIRLINES, INC., a Delaware corporation (hereinafter called *"TWA"*), party of the first part, HUGHES TOOL COMPANY, a Delaware corporation (hereinafter called *"Hughes"*), party of the second part, IRVING TRUST COMPANY, a New York trust company, as agent for the hereinbelow-mentioned

Banks (hereinafter called the *"Bank Agent"*), party of the third part, THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, a New York corporation (hereinafter called *"Equitable"*), and METROPOLITAN LIFE INSURANCE COMPANY, a New York corporation (hereinafter called *"Metropolitan"*), parties of the fourth part, and CHEMICAL BANK NEW YORK TRUST COMPANY, a New York trust company, as Trustee under the Indenture of Mortgage dated as of December 1, 1960, from TWA (hereinafter called the *"Trustee"*), party of the fifth part.

WITNESSETH:

WHEREAS, pursuant to a program (hereinafter called the *"Jet Flight Equipment Program"*) for the modernization of its aircraft fleet, (a) TWA has acquired and now owns 15 Boeing Model 707-131 aircraft and 12 Boeing Model 707-331 aircraft and certain spare jet engines, spare parts, equipment and provisioning (hereinafter called *"spares"*) required by TWA to operate such aircraft, (b) TWA has acquired by assignment from Hughes the right to acquire from the manufacturers, pursuant to contracts between the manufacturers and Hughes, 20 Convair Model 880 aircraft (one or more of which aircraft TWA has acquired) and certain spares required by TWA to operate such aircraft and the aircraft referred to in clause (a) of this recital, and (c) TWA has the right to acquire from the manufacturers, pursuant to contracts between the manufacturers and TWA, certain spares required by TWA to operate the aircraft referred to in clauses (a) and (b) of this recital; and

WHEREAS Hughes is the owner of not less than 5,221,301 shares of Common Stock, par value $5 per share, of TWA, [fol. 4302] comprising approximately 78% of the outstanding 6,674,155 shares of Common Stock of TWA; and

WHEREAS TWA has executed and delivered to the Trustee an Indenture of Mortgage dated as of December 1, 1960 (hereinafter called the *"Note Indenture"*), which provides for (a) the delivery of $72,200,000 principal amount of 6%

Equipment Mortgage Serial Notes of TWA, maturing serially on December 31, 1961, and quarterly thereafter through December 31, 1964 (hereinafter called *"Serial Notes"*), and (b) the issuance of $92,800,000 principal amount of 6½% Equipment Mortgage Sinking Fund Notes of TWA, due December 31, 1972 (hereinafter called *"Sinking Fund Notes"*), all said Serial Notes and Sinking Fund Notes being hereinafter collectively called the *"Notes"*; and

WHEREAS, in order to finance part of the cost of the Jet Flight Equipment Program, TWA has entered into an agreement dated as of December 1, 1960 (hereinafter called the *"December 1960 Loan Agreement"*), with Irving Trust Company and the other Banks named therein (hereinafter collectively called the *"Banks"*) and the Bank Agent, pursuant to which the Banks have agreed to lend an aggregate of $72,200,000 to TWA, such loans to be evidenced by an equal aggregate principal amount of Serial Notes; and

WHEREAS, in order to finance part of the cost of the Jet Flight Equipment Program, TWA has entered into agreements dated as of December 1, 1960 (hereinafter called the *"Note Purchase Agreements"*), with Equitable and Metropolitan (hereinafter together called the *"Insurance Companies"*), pursuant to which the Insurance Companies have agreed to purchase from TWA an aggregate of $92,800,000 principal amount of Sinking Fund Notes; and

WHEREAS it is a condition precedent to the obligation of the Banks to advance any moneys to TWA pursuant to the December 1960 Loan Agreement, and it is a condition precedent to the obligations of the Insurance Companies to purchase any Sinking Fund Notes from TWA pursuant to [fol. 4303] the Note Purchase Agreements, that this Agreement shall have been duly executed and delivered by the parties thereto; and

WHEREAS the Bank Agent has been duly authorized by the Banks to enter into this Agreement;

NOW, THEREFORE, in consideration of the premises, the parties hereto agree with each other as hereinbelow set forth:

ARTICLE ONE

Financing Provisions

§ 1.1. TWA shall issue to Hughes, and Hughes shall accept from TWA, on the First Closing Date (which term, as used herein, means the date designated pursuant to the December 1960 Loan Agreement as the date on which the Banks will make the first advance of moneys to TWA thereunder and the date specified in the Note Purchase Agreements as the date on which the Insurance Companies will make the first purchase of Sinking Fund Notes from TWA thereunder), $100,000,000 principal amount of subordinated promissory notes of TWA (hereinafter called "*Interim Subordinated Notes*"), in payment *pro tanto* of the amounts owing by TWA to Hughes on the First Closing Date (including TWA's obligation to deliver subordinated obligations to Hughes with respect to jet aircraft and spares acquired by TWA prior to the date hereof pursuant to the Jet Flight Equipment Program, but not the interest on such subordinated obligations). The Interim Subordinated Notes shall be dated the date of delivery thereof, shall bear interest at such rate (not exceeding 7% per annum) as shall be agreed upon between TWA and Hughes, which interest shall be payable monthly to the extent permitted by § 4.30C of the Note Indenture and as otherwise permitted by § 1.4 hereof, shall be stated to mature not earlier than June 30, 1973 (except as otherwise permitted by § 1.4 hereof), and shall contain the notation and statement required by clause (a) of the third sentence of § 2.8 hereof.

[fol. 4304] § 1.2. TWA shall proceed as soon as practicable, and in any event not later than May 31, 1961, to make an offer (hereinafter called the "*Subscription Offer*") to the holders of its Common Stock, pursuant to which it will grant to such stockholders the right to subscribe, ratably in proportion to the number of shares of Common Stock held by them on the record date fixed by TWA for the determination of stockholders entitled to receive the Subscription Offer, for an aggregate of not less than $100,000,000 principal amount of subordinated debentures

of TWA (hereinafter called *"Subordinated Debentures"*) at a subscription price, payable in cash (except as otherwise permitted by § 1.4 hereof), of not less than 100% of the principal amount of such Subordinated Debentures. The Subordinated Debentures may be convertible into Common Stock of TWA, or may carry the right, by accompanying or attached warrants or otherwise, to purchase additional shares of Common Stock of TWA, at such price or prices and during such period or periods as TWA shall determine. The Subordinated Debentures shall bear interest at such rate (not exceeding 7% per annum) as shall be agreed upon between TWA and Hughes, which interest shall be payable only if earned, but shall be cumulative, shall be stated to mature not earlier than June 30, 1973, and shall contain provisions substantially identical with those contained in § 2.2 to § 2.6, inclusive, of this Agreement, specifically subordinating the Subordinated Debentures to the payment in full of the Notes and of all other Senior Indebtedness of TWA (as defined in § 2.1 hereof) to the extent provided in § 2.2 to § 2.6, inclusive, of this Agreement and a statement to the effect that each holder of Subordinated Debentures by his acceptance thereof agrees to be bound by all such subordination provisions.

§ 1.3. Hughes shall purchase from TWA, and TWA shall issue and sell to Hughes, not later than three business days after the expiration of the Subscription Offer (and not later in any event than June 30, 1961), at a price not less than the subscription price specified in the Subscription Offer, such principal amount of Subordinated Debentures as shall be equal to the excess, if any, of (a) $100,000,000, over (b) the aggregate principal amount of Subordinated [fol. 4305] Debentures subscribed for pursuant to the Subscription Offer (including any Subordinated Debentures thus subscribed for by Hughes), *provided, however*, that the maximum aggregate principal amount of Subordinated Debentures which Hughes shall be required to purchase from TWA and TWA shall be required to issue and sell to Hughes, pursuant to the Subscription Offer and this § 1.3, shall not exceed $100,000,000, although Hughes shall be entitled at its option (without any consent or other ac-

tion by the parties hereto, other than TWA) to purchase from TWA a greater principal amount of Subordinated Debentures.

§ 1.4. It is understood that TWA shall pay or refund the Interim Subordinated Notes issued by it to Hughes, pursuant to § 1.1 hereof, upon the purchase by Hughes of Subordinated Debentures, pursuant to § 1.3 hereof, and Hughes shall accept such Subordinated Debentures in any such refunding of the Interim Subordinated Notes up to the aggregate principal amount of Subordinated Debentures which Hughes is so obligated to purchase. Such refunding will be effected (a) by the application by TWA of moneys received from the sale of the Subordinated Debentures, pursuant to the Subscription Offer or to Hughes pursuant to § 1.3 hereof, to redeem and retire all the Interim Subordinated Notes at a redemption price in cash equal to the principal amount thereof plus all interest then accrued and unpaid thereon, or (b) by TWA accepting Interim Subordinated Notes, at the principal amount thereof, in payment for the Subordinated Debentures which Hughes has agreed to purchase pursuant to § 1.3 hereof, and by TWA paying the accrued and unpaid interest on such Interim Subordinated Notes, in cash, to the extent permitted by § 4.30C of the Note Indenture, or, to the extent that such cash payment is not so permitted, by Hughes accepting additional Subordinated Debentures, at the principal amount thereof, in satisfaction of such accrued and unpaid interest, or (c) by any combination of (a) and (b) agreed upon between TWA and Hughes, or (d) in such other manner as may be agreed upon between TWA and Hughes, with the written consent of the Bank Agent and the Insurance Companies. Concurrently with any such refunding of Interim [fol. 4306] Subordinated Notes, TWA shall pay, to the same extent and in the same manner and subject to the same limitations as in the case of the accrued and unpaid interest on such Interim Subordinated Notes, the accrued and unpaid interest on the subordinated obligations referred to in, and refunded as permitted by, § 1.1 of this Agreement.

§ 1.5. Hughes hereby establishes a revolving credit (hereinafter called the *"Credit"*) in favor of TWA in the aggregate principal amount of $50,000,000, for the period commencing on the First Closing Date and ending on the last day of the month next following the month in which TWA shall take delivery of and pay for the last of the 20 Convair Model 880 aircraft (hereinafter called the *"Last Aircraft"*) which TWA has the right to acquire under the Jet Flight Equipment Program. The Credit shall expire and terminate on the last day of such period.

§ 1.16. As promptly as possible, but in no event more than 25 days, after the end of each month from December, 1960, to and including the month in which TWA shall take delivery of and pay for the Last Aircraft, TWA will furnish a copy of its balance sheet as of the last day of such month to each of the parties hereto. If the Net Working Capital of TWA, as shown by said balance sheet, shall be less than $10,000,000, TWA shall borrow from Hughes and Hughes shall lend to TWA, under the Credit, an amount equal to the deficiency (or the amount of the Credit then unused, if that be smaller), each loan so made to be evidenced by a subordinated note of TWA (hereinafter called an *"Interim Subordinated Obligation"*), dated the date the loan is made, maturing on the date the Credit expires, bearing interest at such rate (not exceeding 7% per annum), as shall be agreed upon by TWA and Hughes, which interest shall be payable only to the extent permitted by § 1.7 and § 1.8 hereof, and containing the notation and statement required by clause (a) of the third sentence of § 2.8 hereof; *provided, however,* that Hughes shall not be obligated to make any such loan under the Credit at any time when the aggregate principal amount of Interim Subordinated Obligations outstanding under the Credit equals [fol. 4307] $50,000,000. Each such loan shall be made five business days after TWA furnishes said balance sheet to Hughes, or on such earlier date as may be agreed upon between Hughes and TWA. The term "Net Working Capital" as used in this Section and in § 1.7 hereof shall mean, at any date, the excess of the Current Assets over the Current Liabilities (both as defined in § 1.3 of the Note Indenture) of TWA at such date, *provided, however,* that in any

computation of Net Working Capital for purposes of this Section and § 1.7 hereof (i) the principal of the Interim Subordinated Notes and the Interim Subordinated Obligations shall be excluded from Current Liabilities, and (ii) the assets constituting the completely funded reserves referred to in § 5.3 of the Note Indenture shall be included in Current Assets.

§ 1.7. If any balance sheet furnished by TWA pursuant to § 1.6 hereof shall show that the Net Working Capital of TWA exceeded $10,000,000 on the date thereof, TWA shall, at the request of Hughes made within five business days after TWA shall have furnished said balance sheet to Hughes, apply all or any part of such excess, to the extent required, first to the payment of the accrued and unpaid interest on, and then to the payment of the principal of, any Interim Subordinated Obligations at the time outstanding under the Credit.

§ 1.8. On the day the Credit expires, TWA shall pay in cash, to the extent permitted by § 4.30C of the Note Indenture, the accrued and unpaid interest on any Interim Subordinated Obligations then outstanding under the Credit and TWA shall deliver to Hughes in exchange for said Interim Subordinated Obligations and in satisfaction of any accrued and unpaid interest thereon to the extent not permitted to be paid by § 4.30C of the Note Indenture, a new subordinated note (hereinafter called the "*Subordinated Obligation*") for a principal amount equal to the aggregate principal amount of said Interim Subordinated Obligations and any such interest not paid in cash, dated the date of delivery, stated to mature not earlier than June 30, 1973, and bearing interest at such rate (not exceeding 7% per [fol. 4308] annum) as shall be agreed upon between TWA and Hughes, which interest shall be payable only if earned, but shall be cumulative. The Subordinated Obligation shall contain the notation and statement required by clause (a) of the third sentence of § 2.8 hereof.

§ 1.9. As promptly as possible, but in no event more than 25 days, after the end of each month in which the Subordinated Obligation is outstanding, TWA will furnish a copy of its balance sheet as of the last day of such month to each

of the parties hereto. If the Net Working Capital of TWA, as shown by said balance sheet, shall exceed $15,000,000, TWA shall, at the request of Hughes made within five business days after TWA shall have furnished said balance sheet to Hughes, apply all or any part of such excess, to the extent required, to the payment of the principal of the Subordinated Obligation; *provided, however,* that no such payment shall be made (a) unless and until all cumulative interest accrued on the Subordinated Debentures to the last interest payment date immediately preceding such payment shall have been earned and paid in full, or (b) if after giving effect, as if paid, to such payment a default would exist in the performance or observance of any covenant or agreement of TWA contained in the Note Indenture. The term "Net Working Capital" as used in this Section shall mean, at any date, the excess of the Current Assets over the Current Liabilities (both as defined in § 1.3 of the Note Indenture) of TWA at such date, *provided, however,* that in any computation of Net Working Capital for purposes of this Section, (i) the principal of the Interim Subordinated Notes shall be excluded from Current Liabilities, (ii) there shall be included in Current Liabilities only such portion, if any, of the principal of any other Subordinated Indebtedness (as defined in § 2.1 hereof) and of the accrued interest on any Subordinated Indebtedness as at the date of such computation (and before giving effect to such computation) TWA shall be obligated to pay to the holders thereof within one year after such date, and (iii) the assets constituting the completely funded reserves referred to in § 5.3 of the Note Indenture shall be included in or excluded from Current Assets as may be required by sound accounting practice.

[fol. 4309] ARTICLE TWO

Subordination Provisions

§ 2.1. For all purposes of this Article Two:

(a) *"Senior Indebtedness"* shall mean (except as otherwise provided in § 2.7 hereof) (i) the Notes, (ii) any obligations of TWA for money borrowed (other

than for money borrowed from Hughes) which shall not have been specifically subordinated to the prior payment of the Notes at the time such obligations shall be incurred by TWA in the instrument creating or evidencing the same, and (iii) any obligations issued in renewal, extension, refunding, amendment or modification of any of the Notes or such other obligations.

(b) *"Guaranteed Obligations"* shall mean (i) any indebtedness or other obligation of TWA, payment of the principal of, premium, if any, or interest on which shall have been guaranteed by Hughes subsequent to the date of this Agreement, and (ii) any other obligation of TWA, the performance of which shall have been guaranteed by Hughes subsequent to the date of this Agreement.

(c) *"Subordinated Indebtedness"* shall mean all indebtedness which is not Senior Indebtedness and shall include (i) the Interim Subordinated Notes, (ii) the Subordinated Debentures, (iii) the Interim Subordinated Obligations, (iv) the Subordinated Obligation, (v) any indebtedness of TWA to Hughes arising by reason of money borrowed by TWA from Hughes or advances made by Hughes to or for account of TWA, (vi) any indebtedness of TWA to Hughes arising by reason of any payments made by Hughes under any guaranty by Hughes of any Guaranteed Obligations, and all rights and claims of Hughes against TWA so arising, and (vii) any obligations issued in renewal, extension, refunding, amending or modification of any of the foregoing. Subordinated Indebtedness may (but need not) be convertible into stock of TWA and may (but need not) carry the right, by accompanying or attached warrants or otherwise, to purchase such stock.

(d) *"Hughes"* shall mean, in addition to Hughes Tool Company, any person, firm or corporation (except [fol. 4310] TWA and its subsidiaries) directly or indirectly controlling, controlled by or under common control with Hughes Tool Company, and any corporation which shall have acquired all or substantially all

the assets of Hughes Tool Company by purchase, merger, consolidation or otherwise.

(e) *"TWA"* shall mean, in addition to Trans World Airlines, Inc., any corporation which shall have acquired all or substantially all the assets of Trans World Airlines, Inc. by purchase, merger, consolidation or otherwise.

(f) *"Payment"* shall mean any payment or distribution of any kind or character, or setting aside therefor whether in cash, securities or other property, made, given or permitted, directly or indirectly, by set off, redemption or other retirement, purchase or other acquisition or in any other manner, for the account of or by TWA, or the giving, or the realizing upon, any security, and shall include any distribution, division or application, partial or complete, voluntary or involuntary, by operation of law or otherwise, of all or part of the assets of TWA or the proceeds thereof, to any creditors of TWA or in respect of any indebtedness of TWA, including any such distribution, division or application by reason of any liquidation, dissolution or winding up of TWA or its business or by reason of any sale, receivership, insolvency or bankruptcy proceedings or assignment for the benefit of creditors or any proceeding by or against TWA for any relief under the bankruptcy, reorganization or insolvency laws, Federal or state, or any law, Federal or state, relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangement, composition or extension. The issue of Subordinated Indebtedness in exchange for a like principal amount of other Subordinated Indebtedness shall not be deemed to constitute payment.

(g) *"Reorganization securities"* shall mean any securities or other property delivered in any proceeding referred to in § 2.3 hereof directly to the holders of the Senior Indebtedness or to the Trustee, or delivered to the holders of the Subordinated Indebtedness and by them delivered to the holders of the Senior In-

debtedness or to the Trustee, pursuant to any provision of this Article Two.

(h) *"Payment in full"* and *"paid in full"*, in respect of the Senior Indebtedness, shall mean payment in full in cash of the aggregate amount of the principal and premium, if any, of, the indebtedness represented by, [fol. 4311] and the interest on (excluding interest on overdue principal, premium and interest, to the extent permitted by law), the Senior Indebtedness, (i) by the direct payment in cash of such aggregate amount to the holders of the Senior Indebtedness, or (ii) by the realization of such aggregate amount in cash through the sale or other disposition of any property mortgaged or pledged as security for the Senior Indebtedness, and the payment to the holders of the Senior Indebtedness of the cash so realized, or (iii) by the realization of such aggregate amount in cash through the sale or other disposition of reorganization securities delivered to the holders of the Senior Indebtedness or to the Trustee under any provision of this Article Two, and the payment to the holders of the Senior Indebtedness of the cash so realized, or (iv) through any combination of the payments described in the foregoing clauses (i), (ii) and (iii) which shall result in the payment in cash of such aggregate amount to the holders of the Senior Indebtedness. For the purposes of the foregoing definition, the term "payment in cash" shall include any provision for such payment contemplated by subdivision (a) of § 2.3 hereof.

§ 2.2. Except as otherwise provided in § 2.6 hereof, all the Subordinated Indebtedness shall be, and hereby is, subordinated and subject in right of payment to the prior payment in full of all the Senior Indebtedness (other than Senior Indebtedness which shall be deemed to have become Subordinated Indebtedness, as provided in § 2.7 hereof) and each holder of Subordinated Indebtedness hereby directs TWA to make, and TWA hereby agrees to make, prior payment in full of the Senior Indebtedness and to make payments to such holder on account of the Subordi-

nated Indebtedness only after payment in full of the Senior Indebtedness.

§ 2.3. Upon any distribution of all or substantially all the assets of TWA or upon any dissolution, winding up or liquidation of TWA, whether voluntary or involuntary, or upon any reorganization, readjustment, arrangement or similar proceeding relating to TWA or any of its creditors as such or property, whether in bankruptcy, insolvency, receivership proceeding or otherwise, or upon any assignment by TWA for the benefit of creditors or upon any other marshalling of the assets or liabilities of TWA,

[fol. 4312] (a) all the Senior Indebtedness shall first be paid in full or provision made for such payment by deposit of the requisite cash in trust with the Trustee or other duly appointed paying agents for the purpose before any payment is made on account of the principal of or interest on the Subordinated Indebtedness;

(b) any payment to which any holder of the Subordinated Indebtedness would be entitled except for the provisions of this Agreement shall be paid or delivered by the trustee, receiver, assignee for the benefit of creditors, or other liquidating agents making such payment, directly to the holders of the Senior Indebtedness (or to the Trustee), ratably in accordance with their respective interests, to the extent necessary to make payment in full of the Senior Indebtedness after giving effect to any concurrent payment or provision therefor as aforesaid to the holders of the Senior Indebtedness; and

(c) in the event that notwithstanding the foregoing, any payment shall be received by any holder of the Subordinated Indebtedness before all such Senior Indebtedness is paid in full, or provision is made as aforesaid for its payment, such payment shall be held in trust for the benefit of, and shall be paid over or delivered in precisely the form received (except for the endorsement or assignment of such holder of Subordinated Indebtedness where necessary) to the holders of, the Senior Indebtedness (or to the Trustee),

ratably in accordance with their respective interests, for application to or payment of all the Senior Indebtedness remaining unpaid to the extent necessary to make payment in full of the Senior Indebtedness after giving effect to any concurrent payment or provision therefor as aforesaid to the holders of the Senior Indebtedness. Each holder of Subordinated Indebtedness hereby irrevocably authorizes the Trustee, or any of its officers, or any holder of Senior Indebtedness, to make any such endorsement or assignment in the case of his failure or omission to make the same.

Each holder of Subordinated Indebtedness hereby agrees that the holders of the Senior Indebtedness or the Trustee may sell or otherwise dispose of any reorganization securities, for such price or prices and on such terms of payment as such holders or the Trustee in their or its uncontrolled discretion shall determine, and that only the amount [fol. 4313] in cash realized through such sale or other disposition of such reorganization securities shall be taken into account for purposes of determining whether the Senior Indebtedness has been paid in full pursuant to the provisions of this Article Two.

§ 2.4. The Trustee is hereby irrevocably authorized and empowered, but shall have no obligation, to demand, sue for, collect and receive every payment required or permitted by the terms of this Agreement to be paid or delivered to the Trustee, and to give acquittance therefor, and to file claims and proofs of claim and to take such other steps or proceedings, including the right to vote the full amount of Subordinated Indebtedness in any proceeding referred to in § 2.3 hereof or at any meeting of the creditors of TWA (whether or not held in connection with any such proceeding) in the Trustee's own name or in the name of any holder of Subordinated Indebtedness, or otherwise, as the Trustee may deem necessary or advisable. In the event the Trustee shall exercise the rights conferred upon it by this § 2.4, each holder of Subordinated Indebtedness agrees to execute and deliver to the Trustee such powers of attorney, proofs of claim, assignments of claim or proofs of claim,

or other instruments, or furnish information, as the Trustee may request in order to enable the Trustee to enforce any and all claims upon or with respect to the Subordinated Indebtedness and to collect and receive any and all payments which may be payable or deliverable at any time upon or with respect o the Subordinated Indebtedness. In the event the Trustee shall not exercise the right conferred upon or with respect to the Subordinated Indebtedness. In respect of the Subordinated Indebtedness in any proceeding referred to in § 2.3 hereof, within 30 days after being requested so to do by any holder of the Notes, then, unless the Trustee shall have been directed not to file such a claim or proof of claim by a majority of the Noteholders (as that term is defined in § 4.32 of the Note Indenture), any holder of Notes shall have the right to file such a claim or proof of claim.

The Trustee shall not be liable to any holder of Subordinated Indebtedness or to any trustee under any instrument creating Subordinated Indebtedness for any acts done (ex- [fol. 4314] cept such acts as may have been done by the Trustee in bad faith) in accordance with the provisions of this Article Two.

§ 2.5. Neither the Trustee nor any holder of the Senior Indebtedness shall be deemed to have waived any rights hereunder unless such waiver shall be in writing and signed by the Trustee or such holder, and each waiver shall relate only to the instance therein specified and shall in no way impair the rights of the Trustee or of such holder of Senior Indebtedness and shall in no way affect the obligations or liabilities of Hughes or TWA in respect of any other instance. No delay on the part of the Trustee or of any holder of Senior Indebtedness in the exercise of any right hereunder, or the failure to exercise the same, shall operate as a waiver of such right. Each holder of Subordinated Indebtedness agrees that the Trustee and such holders of Senior Indebtedness, without notice to or the consent of such holder of Subordinated Indebtedness and without affecting to any extent any obligation or liability of such holder of Subordinated Indebtedness or any of the rights

of the Trustee hereunder, (a) may accelerate the maturity of any or all of the Senior Indebtedness, in accordance with the respective terms thereof, (b) may exchange, sell, surrender, release, fail to resort to or realize upon, or otherwise deal with, any of the property mortgaged under the Note Indenture and any other property securing Senior Indebtedness, and (c) may enter into agreements amending the Note Indenture or other instruments creating or evidencing Senior Indebtedness, to the extent permitted by the respective terms thereof, provided that such agreements shall not impose any restrictions, in addition to those now set forth in this Article Two, on the right of TWA to make, or the right of such holder of Subordinated Indebtedness to receive, payments of the principal and interest on the Subordinated Indebtedness.

§ 2.6. No payment of principal shall be made on the Subordinated Indebtedness, except as permitted by § 4.30A of the Note Indenture, and no holder of the Subordinated Indebtedness shall be entitled to receive any such payment, unless and until all the Notes shall first be paid in full. No payment of interest shall be made on the Subordinated [fol. 4315] Indebtedness if the making of such payment would constitute a default in the performance or observance of any covenant or agreement of TWA contained in § 4.30B or § 4.30C of the Note Indenture, and no holder of the Subordinated Indebtedness shall be entitled to receive any such payment. In the event that notwithstanding the foregoing, any payment shall be received by any holder of the Subordinated Indebtedness in respect of the principal of or interest on the Subordinated Indebtedness, such payment shall be held in trust for the benefit of, and shall be paid over to, the holders of the Senior Indebtedness upon demand by the Trustee or any holder of any of the Senior Indebtedness. Nothing contained in this Article Two (i) shall affect the obligation of TWA to make, or prevent TWA from making, payments of principal of or interest on the Subordinated Indebtedness at any time, except during the pendency of any of the proceedings or upon the happening of any of the events referred to in § 2.3 hereof or under circumstances which would constitute a violation of

any of the provisions of this § 2.6 or (ii) shall prevent the payment when due of the principal of or interest on the Subordinated Indebtedness after the payment in full of the Notes.

§ 2.7. In the event that (a) Hughes shall acquire, directly or indirectly, any of the Senior Indebtedness, or (b) Hughes shall acquire, directly or indirectly, any of the Guaranteed Obligations, either in performance or satisfaction of its obligations under its guaranty thereof, or otherwise, then, and in any such case, the Senior Indebtedness and the Guaranteed Obligations (to the extent that such Guaranteed Obligations would otherwise constitute Senior Indebtedness, as defined in this Agreement) thus acquired by Hughes and any obligations issued in renewal, extension, refunding, amendment or modification of such Senior Indebtedness and Guaranteed Obligations shall be deemed, for all purposes of this Agreement, to have ceased to be Senior Indebtedness and to have become Subordinated Indebtedness, as such terms are defined in this Agreement, and shall retain such status of Subordinated Indebtedness until the payment in full of all the Senior Indebtedness, notwithstanding any subsequent sale, hypothecation, transfer or other disposition by Hughes of the Senior Indebtedness or Guaranteed Obligations thus acquired by Hughes [fol. 4316] or any obligations issued in renewal, extension, refunding, amendment or modification of such Senior Indebtedness or Guaranteed Obligations. Hughes agrees that, in the event it shall thus acquire any of the Senior Indebtedness or Guaranteed Obligations, it will, forthwith after such acquisition, present the same to the Trustee for endorsement thereon of an appropriate notation referring to the provisions of this Agreement.

§ 2.8. This Article Two defines solely the relative rights as between the holder or holders of the Subordinated Indebtedness and the holders of the Senior Indebtedness. Nothing in this Article Two shall be deemed to impair the obligations of TWA in respect of the Subordinated Indebtedness as between TWA and the holder or holders of the Subordinated Indebtedness. Each holder of Subordinated

Indebtedness, whether or not a party hereto, shall by his acceptance of such Subordinated Indebtedness be deemed to have irrevocably agreed to be bound by all the provisions of this Article Two; and every instrument creating or evidencing Subordinated Indebtedness either (a) shall contain an appropriate notation referring to this Agreement and a statement to the effect that each holder of Subordinated Indebtedness by his acceptance thereof agrees to be bound by all the provisions of this Article Two, or (b) shall contain provisions substantially identical with those contained in § 2.2 to § 2.6, inclusive, of this Agreement, specifically subordinating such Subordinated Indebtedness to the Senior Indebtedness of the Company to at least the same extent as the Subordinated Debentures are subordinated to the Notes by the provisions of this Article Two, subject to the provisions of the last sentence of § 2.6 hereof, and a statement to the effect that each holder of such Subordinated Indebtedness by his acceptance thereof agrees to be bound by all such subordination provisions.

[fol. 4317]

ARTICLE THREE

Miscellaneous

§ 3.1. All requests, notices and other communications hereunder shall be in writing and shall be delivered or mailed addressed to each of the respective parties hereto at its address set forth below, unless such address shall have been changed by written notice to the other parties of such change, in which event it shall be addressed to such changed address:

If to Hughes:

Hughes Tool Company,
2200 Gulf Building,
Houston 2, Texas.

Attention: *Mr. Raymond M. Holliday,*
Vice-President—Finance.

If to TWA:

Trans World Airlines, Inc.,
380 Madison Avenue,
New York 17, N. Y.

Attention: *Senior Vice President—Finance and Treasurer.*

If to the Bank Agent:

Irving Trust Company,
One Wall Street,
New York 15, N. Y.

Attention: *Mr. Robert A. Kerr, Vice-President.*

If to Equitable:

The Equitable Life Assurance Society of the United States,
261 Madison Avenue,
New York 16, N. Y.

Attention: *Securities Investment Department.*

[fol. 4318]

If to Metropolitan:

Metropolitan Life Insurance Company,
One Madison Avenue,
New York 10, N. Y.

Attention: *Vice-President and Treasurer.*

If to the Trustee:

Chemical Bank New York Trust Company,
Corporate Trust Department,
100 Broadway,
New York 15, N. Y.

Attention: *Mr. John H. Baile, Trust Officer.*

Any such request, notice or other communication shall be deemed sufficiently delivered or served if mailed by regis-

tered or certified mail, postage prepaid, addressed as hereinabove in this § 3.1. provided.

§ 3.2. This Agreement shall not be amended, modified or terminated except with the written consent of each of the parties hereto.

§ 3.3. Hughes agrees that it will not consolidate with, merge into, or convey or transfer all or substantially all of its property as an entirety to, any person unless the successor formed by or resulting from such consolidation or merger or to which such conveyance or transfer is made shall execute and deliver to the other parties to this Agreement, simultaneously with such consolidation, merger, conveyance or transfer, a supplemental agreement to this Agreement wherein the due and punctual performance of the covenants and agreements herein which are to be performed or observed by Hughes shall be assumed by such successor corporation.

§ 3.4. In case any corporation shall become a successor to TWA or any such successor corporation, in accordance with Article Thirteen of the Note Indenture, the term *"TWA"* as used herein shall be deemed to mean and include such successor corporation.

[fol. 4319] § 3.5. All covenants, conditions and provisions of this Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, including any successor holder of all or any part of the Notes at any time held by any of the Banks or Insurance Companies, and including also, in the case of Hughes (as defined in Article Two hereof), any subsequent holder of the Subordinated Indebtedness (as defined in Article Two hereof), and no other person shall have any legal or equitable right or remedy to enforce the provisions of this Agreement.

§ 3.6. This Agreement shall terminate as to the Trustee upon the payment in full of all the Notes (except such Notes as shall be deemed to have become Subordinated Indebtedness, as provided in § 2.7 hereof).

§ 3.7. The term "Trustee" as used in this Agreement shall mean Chemical Bank New York Trust Company, or

any successor in trust, as Trustee under the Note Indenture and not as trustee for any other purpose.

§ 3.8. The Trustee shall not incur any liability to anyone by reason of anything done or omitted to be done by it at the request or direction of a majority of the Noteholders (as that term is defined in § 4.32 of the Note Indenture), or for any action which it may take or refrain from taking in respect thereof upon like request or direction. The Trustee shall not incur any liability whatsoever except for its own individual negligence or malfeasance in the discharge of its duties, nor shall it be liable for any error of judgment made in good faith by any of its agents, officers or employees, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts.

§ 3.9. Where it is herein provided that copies of balance sheets are to be delivered to the Trustee, TWA shall (unless said balance sheets have not been delivered to the Noteholders) deliver to the Trustee, in lieu thereof, a certificate signed by any two officers of TWA stating that such balance sheets have been delivered to the Noteholders.

§ 3.10. This Agreement shall be governed by the laws of the State of New York.

[fol. 4320] § 3.11. This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and all such counterparts shall together constitute but one and the same Agreement.

In witness whereof, the parties hereto have duly executed this Agreement as of the day and year first above written.

Hughes Tool Company,

By .....
Vice-President

Attest:

.....
Assistant Secretary

Trans World Airlines, Inc.,

By .....
Senior Vice President—
Finance and Treasurer.

Attest:

.....
Assistant Secretary

IRVING TRUST COMPANY, as Agent for the Banks named in the above-mentioned December 1960 Loan Agreement,

By .....
Vice-President

Attest:

.....
Assistant Secretary

[fol. 4321]

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES,

By .....
Treasurer

Attest:

.....
Assistant Secretary

METROPOLITAN LIFE INSURANCE COMPANY,

By .....
Vice-President

Attest:

.....
Assistant Secretary

CHEMICAL BANK NEW YORK TRUST COMPANY, as Trustee, as aforesaid,

By .....
Vice-President

Attest:

.....
Assistant Secretary

[fol. 4322]

Exhibit B

HUGHES TOOL COMPANY
GULF BUILDING
HOUSTON 2, TEXAS

December 29, 1960

Trans World Airlines, Inc.
380 Madison Avenue
New York 17, New York

FINAL ACCOUNTING AND
DEBENTURE PURCHASE AGREEMENT

Dear Sirs:

This will confirm the understanding between you (hereinafter called "TWA") and the undersigned (hereinafter called "Hughes") with respect to the matters set forth herein.

1. *Prior Transactions.*

a. Pursuant to a general plan for the financing by TWA of its acquisition of 15 Boeing Model 707-131 aircraft, 12 Boeing Model 707-331 aircraft, 20 Convair Model 880 aircraft and 1 Link Flight Simulator for Convair Model 880 aircraft, together with related spare parts and provisioning for the above including Pratt & Whitney and General Electric turbo-jet engines, Hughes and TWA have heretofore entered into various assignments and other agreements including the following:

Agreement dated April 1, 1960
Agreement dated April 14, 1960
Agreement dated May 9, 1960, as amended by agreements dated May 16, 1960, May 23, 1960 and June 30, 1960.

b. TWA is also indebted to Hughes in the amount of $5,811,000 as evidenced by a promissory note in that principal amount dated December 1, 1957, plus accrued interest to the First Closing Date (which term is used herein as it is defined in the Subordination Agreement) of $783,290.44.

2. *Further Assignments.* The parties agreed that TWA has given Hughes appropriate notice pursuant to paragraphs 5 and 7 of the above-mentioned agreement of May

9, 1960, as amended. Hughes agrees that it will on the First [fol. 4323] Closing Date transfer to TWA good title to the aircraft referred to in paragraph 4 of such agreement and the Spares (or Hughes' interest therein) referred to in paragraph 6 of such agreement and not previously transferred to TWA, in each case free and clear of all liens and encumbrances. Hughes also hereby assigns to TWA (a) all Hughes' rights to acquire from General Dynamics Corporation such of the 20 Convair Model 880 jet aircraft referred to in Exhibit 1 of such agreement (as such Exhibit 1 is amended by Exhibit 1 hereto) as have not previously been acquired by TWA (or in place of any of such aircraft, other aircraft covered by the 880 Purchase Agreement, as may be agreed upon between TWA and Hughes), (b) any and all Hughes' interest in the 880 Purchase Agreement, not previously assigned to TWA, with respect to such 20 Convair Model 880 jet aircraft, it being the intent hereof that, without limiting the generality of the foregoing, this assignment shall constitute full notice to Convair pursuant to Article 16(a) of the 880 Purchase Agreement and transfers to TWA all Hughes' rights and obligations as to such aircraft with respect to price adjustment pursuant to that certain "letter of Agreement No. 1" dated September 20, 1956, as amended or affected by other written instruments prior to the date hereof, TWA expressly agreeing to the limitation contained in Article 16(b) of the 880 Purchase Agreement, (c) any and all Hughes' interests in the 331 Purchase Agreement referred to therein, not previously assigned to TWA, with respect to the 12 Boeing Model 707-331 jet aircraft covered by the 331 Purchase Agreement and acquired by TWA from Hughes or the manufacturer thereof, and (d) any and all Hughes' interests in Purchase Agreement No. 7, dated March 2, 1956, as amended, between Boeing Airplane Company and Hughes covering the manufacture of 15 Boeing Model 707-131 jet aircraft; it being understood that Hughes does not warrant the aircraft or [fol. 4324] Spares described in this paragraph 2, expressly or by implication, and Hughes shall have no liability with respect thereto other than to use its best efforts to pass along to TWA from the respective manufacturers any warranties, patent indemnities and other rights accruing to

Hughes under the purchase agreements covering such aircraft and Spares. Hughes agrees to execute and deliver any further documents and to do any further acts or things that may be reasonably required or appropriate to confirm in TWA the titles and interests so transferred and assigned.

3. *Final Accounting.* By reason of (a) the transfers and assignments to TWA of the jet aircraft, spare engines, spare parts and other equipment and the interests in contracts to acquire such aircraft, spare engines, spare parts and other equipment pursuant to the agreements referred to in paragraph 1 hereof (including TWA's obligation to issue subordinated obligations to Hughes with respect to jet aircraft and equipment acquired by TWA pursuant to such agreements prior to the date hereof, but not the interest applicable to such subordinated obligations), (b) the lease of certain of such jet aircraft by Hughes to TWA prior to their acquisition by TWA, and (c) the promissory note dated December 1, 1957, TWA has become obligated to Hughes as of the First Closing Date in the aggregate net amount of $154,892,499.35. An itemization of such amount is set forth in the schedule attached hereto as Exhibit A.

4. *Settlement of Account.* Settlement of TWA's obligation to Hughes will be made as follows:

a. A cash payment in the amount of $54,892,499.35 delivered to, or for the account of, Hughes on the First Closing Date.

[fol. 4325] b. An Interim Subordinated Note or Notes in the amount of $100,000,000, dated the date of the First Closing Date, bearing interest at the rate of 6½% per annum, and delivered to Hughes on the First Closing Date, in the form provided for in § 1.1 of the Agreement among TWA, Hughes, Irving Trust Company, as Bank Agent, The Equitable Life Assurance Society of the United States, Metropolitan Life Insurance Company and Chemical Bank New York Trust Company, as Trustee, dated December 1, 1960 (herein referred to as the "Subordination Agree-

ment"), and otherwise as provided in the Subordination Agreement.

c. Payment in cash of $1,068,356.52, representing the interest accrued on the subordinated obligations referred to in paragraph 3(a) hereof, from the date TWA was obligated to issue such obligations (subject only to the conditions specified in the agreements relating thereto) to the First Closing Date, will be made by TWA to Hughes upon the refunding of the Interim Subordinated Notes as provided in § 1.4 of the Subordination Agreement (subject to the provisions of § 4.30C of the Note Indenture referred to in the Subordination Agreement).

5. *Registration and Public Offering of Subordinated Debentures.*

TWA agrees that it will proceed as soon as practicable, and in any event not later than May 31, 1961, (subject to the effectiveness of a registration statement therefor under the Securities Act of 1933), to make an offer (hereinafter called the "Subscription Offer") to the holders of its Common Stock, pursuant to which it will grant to such stockholders the right to subscribe, ratably in proportion to the number of shares of Common Stock held by them on the record date fixed by TWA for the determination of stock- [fol. 4326] holders entitled to receive the Subscription Offer, for an aggregate of not less than $100,000,000 and not more than approximately $112,000,000 principal amount of subordinated debentures, upon such terms and with such detachable warrant rights for the acquisition of Common Stock as (a) will be permitted under the terms of the Subordination Agreement, the Note Indenture referred to therein and the related financing agreements to which TWA is a party, (b) will be designed (subject to the other requirements hereof) to make the debentures readily marketable at an offering price payable in cash (except as otherwise provided in the Subordination Agreement) of not less than 100% of the principal amount thereof and (c) will not result in an unreasonable dilution, or unreasonable potential dilution, of presently outstanding stock. Unless mutu-

ally agreed otherwise the terms of the debentures and of any stock warrants attached thereto will conform to the recommendations of a special committee appointed for that purpose by and from TWA's investment banking firms; provided, however, that unless mutually agreed otherwise

(1) the offering price of the debentures will not exceed 105% of their principal amount;

(2) the debentures shall bear interest at the rate of 6½% per annum, payable only if earned, but cumulative, as provided in the Subordination Agreement, and shall otherwise be subject to the provisions of the Subordination Agreement;

(3) the ratio of warrant rights (to purchase one share of Common Stock) to principal amount of debentures will not exceed four for each $100;

(4) the warrants shall be detachable and exercisable not later than 6 months after the date of offering and until approximately the first sinking fund date for the debentures;

(5) the warrants shall be exercisable at a purchase price for each share of common stock of not in excess of 120% of the closing market price of the common stock of TWA on the day preceding the Subscription Offer and shall be exercisable by payment of cash, or surrender of a principal amount of debentures, equal to such purchase price, or a combination thereof;

[fol. 4327] (6) the subordination provisions and other limitations on the payment of principal and interest on the debentures will not be more onerous on the debenture holders, or extend for a longer period, than is required by the Subordination Agreement and Note Indenture, except that

a. a provision may be included prohibiting the payment of principal or interest on the debentures if TWA's Net Working Capital would as a result be less than $15,000,000.

b. retirements (other than out of fixed sinking fund payments) of debentures out of funds other-

wise available for dividends may be discretionary in TWA's Board of Directors.

c. the maturity of the debentures may be as late as June 30, 1978, provided that annual sinking fund payments sufficient to redeem prior to June 30, 1978 at least 50% of the principal amount of the debentures outstanding on June 30, 1973 commence prior to June 30, 1974.

d. TWA will not amend the Note Indenture, or the Notes issued thereunder, or enter into new agreements for Senior Indebtedness as defined in the Note Indenture, if such amendments or agreements would impose any restrictions (other than those contained in the Note Indenture for the exclusive benefit of the holders of Notes to be issued thereunder, at the time it is executed) on the right of TWA to make, or the right of the debenture holder to receive, payments of principal and interest.

Pursuant to § 1.3 of the Subordination Agreement TWA consents and agrees that, in addition to the debentures Hughes has agreed to purchase thereunder, Hughes may purchase not later than three business days after the expiration of the Subscription Offer, at the offering price, all or any part of the debentures not purchased by stockholders pursuant to the Subscription Offer or by Hughes pursuant to such § 1.3.

6. *Listing of Rights.* As soon as it is technically feasible so to do, TWA will apply to the New York Stock Exchange for the listing of the rights to purchase the subordinated debentures with warrants attached, and separately the subordinated debentures, and will apply to the American Stock Exchange for the listing of the warrants to purchase Common Stock.

[fol. 4328] 7. *Interest on Subordinated Obligations.* It is agreed that any Interim Subordinated Obligations or Subordinated Obligation, as defined in § 1.6 and § 1.8 of the Subordination Agreement, that may be issued by TWA pursuant to such agreement, shall bear interest at the rate of 6½% per annum.

8. *Legal Expenses.* TWA will pay the reasonable charges and disbursements of Andrews, Kurth, Campbell & Jones for any services rendered in connection with the subject matter of this Agreement and will reimburse Hughes for any out-of-pocket expenses in connection with the transactions contemplated thereby.

9. *Approvals and Consents.* TWA warrants that it has received from the Civil Aeronautics Board orders dated June 23, 1960 and July 21, 1960 approving its motions dated May 6, 1960 and July 1, 1960 for approval of transactions with Hughes relating to the acquisition of jet equipment and the financing as set forth therein. This agreement will not become effective until any necessary consents have been obtained from the holders of obligations issued by TWA under its outstanding indentures, chattel mortgages and loan agreements.

If the foregoing is acceptable to TWA please so acknowledge by executing and returning the enclosed copy of this letter.

Very truly yours,

HUGHES TOOL COMPANY

By

Accepted as of the day of December, 1960

TRANS WORLD AIRLINES, INC.

By

[fol. 4329]*

Exhibit A

HUGHES—TWA FINAL ACCOUNTING
(As of 12/29/60)

*A. DUE HUGHES TOOL COMPANY FOR JET AIRCRAFT, ENGINES AND FLIGHT SIMULATOR	
I. Summarized by Type of Equipment	
a. Jet aircraft acquired from Hughes	
1. At Undepreciated Cost**	
One Boeing 707-331	$ 5,862,973.93
2. At Net Book Value**	
Fifteen Boeing 707-131's	62,003,590.98
Four Boeing 707-331's	20,563,116.77
b. Contract Rights (at Undepreciated Cost**) to Acquire Jet Aircraft from Manufacturers	
Seven Boeing 707-331's	11,749,463.73
Twenty Convair 880's	21,913,744.75
c. Contract Rights (at Undepreciated Cost**) to Acquire Flight Simulator from Manufacturer	717,591.13
d. Contract Rights (at Undepreciated Cost**) to Acquire Jet Engines from Manufacturers	222,607.62
TOTAL DUE FOR EQUIPMENT	$123,033,088.91

II. Summarized by Type of Payment or Credit	
a. Amounts, including interest, paid to manufacturers	$123,779,782.07
b. Amounts paid vendors for Customer-Furnished Equipment	3,272,180.29
c. Interest on above at 5½% per annum to date of transfer	8,928,195.24
d. Reserve for Depreciation	(13,714,813.69)
e. Other costs allocable to equipment (net after adding interest and deducting depreciation)	767,745.00
TOTAL DUE FOR EQUIPMENT	$123,033,088.91
B. ACCRUED RENTAL PAYMENTS UNDER LEASE OF AIRCRAFT	25,443,120.00
C. PRINCIPAL AND INTEREST ON PROMISSORY NOTE DATED DECEMBER 1, 1957	6,594,290.44
SUBTOTAL	$155,070,499.35
Less: Engineering & administrative costs due TWA	178,000.00
NET AMOUNT DUE HUGHES TOOL COMPANY	$154,892,499.35

NOTES: *(No balance due for spare parts and other equipment)

**(As defined in Agreement of May 9, 1960)

[fol. 4330]

Exhibit C

AGREEMENT

AMONG

TRANS WORLD AIRLINES, INC.

AND

RAYMOND M. HOLLIDAY, and
, as Voting Trustees

AND

HUGHES TOOL COMPANY

VOTING TRUST AGREEMENT

Relating to Common Stock of
Trans World Airlines, Inc.

FARMERS BANK OF THE
STATE OF DELAWARE
AGENT FOR THE VOTING TRUSTEES

Dated as of December 15, 1960

[fols. 4331-4332] AGREEMENT dated as of December 15, 1960, among TRANS WORLD AIRLINES, INC., a Delaware corporation (hereinafter called the *"Corporation"*), party of the first part, and RAYMOND M. HOLLIDAY, and , the survivors or survivor of them and their respective successors appointed as in this Agreement provided, as Voting Trustees (hereinafter called the *"Voting Trustees"*), parties of the second part, and HUGHES TOOL COMPANY, a Delaware corporation (hereinafter called *"Hughes Tool"*), party of the third part.

WITNESSETH:

WHEREAS, the Corporation is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware with an authorized capital stock consisting of 15,000,000 shares of Common Stock, par value $5 per share (hereinafter called *"TWA Stock"*), of which 6,674,155 shares are presently issued and outstanding; and

WHEREAS, at the date of this Agreement, Hughes Tool is the owner of 5,221,301 shares of TWA Stock, comprising approximately 78% of the outstanding shares of TWA Stock, and no Hughes Affiliate (which term, as used herein, shall mean any person, firm or corporation, except the Corporation and its subsidiaries, controlling, controlled by or under common control with Hughes Tool) owns any TWA Stock; and

WHEREAS, the Corporation has executed and delivered to Chemical Bank New York Trust Company, as Trustee (hereinafter called the *"Trustee"*) an Indenture of Mortgage dated as of December 1, 1960 (hereinafter called the *"Note Indenture"*), which provides for (a) the delivery thereunder of $72,200,000 principal amount of 6% Equipment Mortgage Serial Notes of the Corporation maturing serially on December 31, 1961, and quarterly thereafter through December 31, 1964 (hereinafter called *"Serial Notes"*), and (b) the issuance thereunder of $92,800,000 principal amount of 6½% Equipment Mortgage Sinking [fol. 4333] Fund Notes of the Corporation, due December 31, 1972 (hereinafter called *"Sinking Fund Notes"*), all said

Serial Notes and Sinking Fund Notes being hereinafter collectively called the "*Notes*"; and

WHEREAS, the Corporation has entered into an agreement dated as of December 1, 1960 (hereinafter called the "*December 1960 Loan Agreement*"), with Irving Trust Company and the other Banks named therein (hereinafter collectively called the "*Banks*"), pursuant to which the Banks have agreed to lend an aggregate of $72,200,000 to the Corporation, such loans to be evidenced by an equal aggregate principal amount of Serial Notes; and

WHEREAS, the Corporation has entered into agreements dated as of December 1, 1960 (hereinafter called the "*Note Purchase Agreements*"), with The Equitable Life Assurance Society of the United States and Metropolitan Life Insurance Company (hereinafter together called the "*Insurance Companies*"), pursuant to which the Insurance Companies have agreed to purchase from the Corporation an aggregate of $92,800,000 principal amount of Sinking Fund Notes; and

WHEREAS, it is a condition precedent to the obligation of the Banks to advance any moneys to the Corporation pursuant to the December 1960 Loan Agreement, and it is a condition precedent to the obligations of the Insurance Companies to purchase any Sinking Fund Notes from the Corporation pursuant to the Note Purchase Agreements, that this Agreement shall have been duly executed and delivered by the parties hereto; and

WHEREAS, under and by virtue of the provisions of an agreement dated as of December 1, 1960 (hereinafter called the "*Noteholders' Agreement*"), between Irving Trust Company, as agent for the Banks, the Insurance Companies, and Irving Trust Company, as agent for the holders of Notes (hereinafter called the "*Notes Agent*", which term, as used herein, shall include any successor to such Notes Agent), [fol. 4334] the Notes Agent has designated and appointed and as Voting Trustees under this Agreement; and

WHEREAS Hughes Tool has designated and appointed Raymond M. Holliday as a Voting Trustee under this Agreement; and

WHEREAS, each of the Voting Trustees under this Agreement is a citizen of the United States;

NOW, THEREFORE, a voting trust in respect of the TWA Stock is hereby created and established subject to the following terms and conditions, to all and every one of which the parties hereto expressly assent and agree:

FIRST: Hughes Tool agrees that concurrently with the execution and delivery of this Agreement it will transfer and assign, or cause to be transferred and assigned, to the Voting Trustees 5,221,301 shares of TWA Stock and will deposit or cause to be deposited hereunder with the hereinbelow mentioned Agent (hereinafter called the "*Agent*") of the Voting Trustees the certificates for such shares, all of which certificates, if not registered in the name of the Voting Trustees, shall be duly endorsed in blank for transfer or accompanied by proper instruments of assignment and transfer thereof duly executed in blank, in either case with signatures guaranteed and with all requisite stock transfer tax stamps thereto affixed.

SECOND: Hughes Tool agrees that if it or any Hughes Affiliate shall hereafter acquire in any manner (including, without limitation, any acquisition through the exercise of the conversion rights contained in any convertible securities of the Corporation or through the exercise of warrants or rights to subscribe to TWA Stock or in connection with any merger, consolidation or sale of assets of the Corporation or otherwise) any shares of TWA Stock, in addition to those hereinabove mentioned, it will transfer and assign, or cause to be transferred and assigned, to the Voting Trustees such additional shares and will deposit or cause to be deposited hereunder with the Agent the certificates for such additional shares, which certificates, if not registered in the name of the Voting Trustees, shall be duly endorsed in blank for transfer or accompanied by proper instruments [fol. 4335] of assignment and transfer thereof duly executed in blank, in either case with signatures guaranteed and with

all requisite stock transfer tax stamps thereto affixed. The term *"TWA Stock"*, as used in this Article Second, shall mean the Common Stock of the Corporation, as the same shall be constituted from time to time, and shall also mean and include, in the event the Corporation shall merge into or be consolidated with another corporation, or shall sell all or any substantial portion of its assets to another corporation, all voting securities of such other corporation.

THIRD: The Voting Trustees shall from time to time issue in respect to the TWA Stock so deposited hereunder with the Agent a Voting Trust Certificate or Voting Trust Certificates for a like number of shares of such TWA Stock, in substantially the following form and registered in the name of Hughes Tool or in such name as shall be specified in writing by Hughes Tool:

No. .... Shares

TRANS WORLD AIRLINES, INC.

Voting Trust Certificate For Common Stock

THIS IS TO CERTIFY THAT

will, upon the termination of the Voting Trust Agreement hereinafter mentioned and subject to the provisions thereof, upon surrender hereof and upon payment of any stamp tax or other charge in connection with the delivery, be entitled to receive a certificate or certificates, expressed to be fully paid, for shares of Common Stock, par value $5 per share, of Trans World Airlines, Inc., a Delaware corporation (hereinafter called "the Corporation"), heretofore deposited under said Agreement, and is in the meantime entitled to receive payments equal to the cash dividends, if any, collected by or for the account of the Voting Trustees hereinafter named, or their successors, upon a like number of shares, and to receive Voting Trust Certificates (or scrip therefor) in respect of any dividends payable in Common Stock of the Corporation so collected.

This certificate is issued under and the rights represented hereby are subject to, and each successive holder

[fol. 4336] hereof by accepting the same consents and agrees to be bound by, all the terms and conditions of a certain Voting Trust Agreement dated as of December 15, 1960 (hereinafter called the "Voting Trust Agreement"), by and between the Corporation, party of the first part, Raymond M. Holliday, and , the survivors or survivor of them and their respective successors appointed as in the Voting Trust Agreement provided, as Voting Trustees, parties of the second part, and Hughes Tool Company, a Delaware corporation, holder of certain shares of Common Stock of the Corporation, party of the third part. An original counterpart of the Voting Trust Agreement is on file at the principal office of the Corporation in the State of Delaware, and is open to the inspection of any holder of stock of the Corporation or of any Voting Trust Certificate daily during business hours.

No voting right passes by or under this certificate or by or under any agreement expressed or implied, it being expressly understood and agreed that, until the actual delivery of a stock certificate or certificates to the registered owner hereof or his assigns, the Voting Trustees at any time acting under the Voting Trust Agreement shall possess and be entitled in their discretion to exercise in respect of any and all shares of stock called for by this certificate, all rights and powers of every name and nature, including the right to vote thereon and to take or omit to take any other action in respect thereof.

The Voting Trust Agreement will remain in effect until December 15, 1970, unless previously terminated or unless the duration of the Voting Trust Agreement is extended as provided therein.

No stock certificate shall be deliverable in respect hereof until December 15, 1970, or until such earlier or later termination of the Voting Trust Agreement, except as otherwise provided in the Voting Trust Agreement in certain specific cases. Any such delivery shall in any event be subject to the provisions of the Voting Trust Agreement.

This certificate is transferable only on the books of the Voting Trustees at the office of their Agent in the City of Wilmington, Delaware, by the registered owner in person or by attorney duly authorized and upon surrender hereof properly endorsed and payment of any taxes imposed by law on such transfer, and otherwise as provided in the Voting Trust Agreement. Title to [fol. 4337] this certificate, when duly endorsed, shall to the extent permitted by law be transferable with the same effect as in the case of a negotiable instrument. The voting Trustees and their Agent may nevertheless deem and treat the registered holder hereof (or, when presented duly endorsed in blank, the bearer hereof) as the absolute owner hereof for all purposes whatsoever, and neither the Voting Trustees nor their Agent shall be affected by any notice to the contrary.

This certificate is not valid for any purpose until signed by the Agent of the Voting Trustees.

In Witness Whereof, the Voting Trustees have caused this certificate to be signed by their duly authorized Agent.

Dated

Raymond M. Holliday

.....

.....

Voting Trustees.

By Farmers Bank of the State of Delaware,

Agent

By .....

Such certificates shall have a form of assignment on the back thereof in substantially the following form:

For Value Received the undersigned hereby sells, assigns and transfers unto the within certificate and all right, title and interest repre-

sented thereby, and irrevocably constitutes and appoints attorney to transfer the same on the books of the Voting Trustees with full power of substitution in the premises.

[fol. 4338] The Voting Trustees may make such changes in the form of such certificates and may add or append such legends or endorsements thereon as may be required by the rules of any stock exchange on which application may be made to list such certificates or to conform to any usage.

FOURTH: As hereinafter in Article Eighth contemplated, the Voting Trustees may also issue scrip representing fractional interests in respect of Voting Trust Certificates, which scrip shall be in bearer form and transferable by delivery and unless otherwise expressly stated shall have only the rights (1) of exchange for full Voting Trust Certificates and (2) to participate, upon the termination of this Agreement, proportionately in the stock or avails thereof held for the benefit of such scrip. Such scrip shall be of such tenor and form, not inconsistent with the provisions hereof, as the Voting Trustees may approve.

FIFTH: The Voting Trust Certificates shall be printed and shall be signed in the name of the Voting Trustees by their Agent appointed for the purpose, and shall be transferable only on the books of the Voting Trustees at the Office of their Agent in the City of Wilmington, Delaware, as provided in the Voting Trust Certificates and in accordance with the rules from time to time established for that purpose by the Voting Trustees.

The transfer books may be closed by the Voting Trustees for a reasonable time prior to the payment or distribution of any dividend, as well as at any other time or for any other purpose when deemed by the Voting Trustees to be desirable. In lieu of the closing of the books against transfers of Voting Trust Certificates as aforesaid, the Voting Trustees may, if they deem it advisable, fix a date as a record date for the determination of the Voting Trust Certificate holders entitled to receive such dividends; and the owners of Voting Trust Certificates of record on such date

shall exclusively be entitled to participate in the distribution of such dividends.

SIXTH: In case any Voting Trust Certificate shall become mutilated or become lost, destroyed or stolen, the Voting Trustees may, in their uncontrolled discretion, issue and [fol. 4339] deliver in exchange therefor and upon cancellation of the mutilated Voting Trust Certificate, or in lieu of the lost, destroyed or stolen Voting Trust Certificate, a new Voting Trust Certificate representing the same number of shares of stock, upon the production of evidence of such loss, destruction or theft, satisfactory to the Voting Trustees, and upon receipt of indemnity satisfactory to them, and upon compliance also with such other reasonable regulations as they may prescribe.

SEVENTH: The certificates for TWA stock deposited with the Agent of the Voting Trustees shall, if not registered in the name of the Voting Trustees, be surrendered and cancelled and new certificates therefor issued to the Voting Trustees. In all certificates issued in the name of the Voting Trustees it shall appear that they are issued pursuant to this Agreement, and in the entry of such ownership in the books of the Corporation that fact shall also be noted.

Such TWA stock shall be held, used and applied by the Voting Trustees and their successors in office for the purposes of and in accordance with this Agreement.

The Voting Trustees may cause any TWA Stock at any time held by them under this Agreement to be transferred to any name or names other than the name of the Voting Trustees herein named, if such transfer becomes necessary by reason of any change in the persons holding the office of Voting Trustees as hereinafter provided or by reason of any statutory requirement relative to directors' qualifying shares.

EIGHTH: Until the delivery as hereinafter provided of stock certificates or the avails thereof in exchange for Voting Trust Certificates, either upon the termination of this Agreement or pursuant to Article Seventeenth or Article Eighteenth, each registered owner of a Voting Trust Certificate shall be entitled from time to time to receive pay-

ments equal to cash dividends, if any, collected by or for the account of the Voting Trustees upon the number of shares of TWA Stock called for by such Voting Trust Certificate, and to receive Voting Trust Certificates (or scrip therefor) in respect of any dividends payable in TWA Stock so collected.

[fol. 4340] Any dividends received by the Voting Trustees other than cash dividends or dividends payable in TWA Stock shall as soon as conveniently possible be transferred to and distributed among the registered owners of Voting Trust Certificates in accordance with their respective interests therein, all at such time and in such manner as the Voting Trustees shall determine is appropriate.

In case the holders of TWA Stock shall be offered the right to subscribe for or purchase any shares of capital stock of the Corporation, the Voting Trustees shall promptly notify the registered owners of Voting Trust Certificates of the terms of such offer. Upon receipt from a registered owner of any Voting Trust Certificate, within the period fixed by the Voting Trustees for such purpose, of a request to subscribe for or purchase shares of such capital stock pursuant to such offer (in an amount not in excess of the ratable amount which might be subscribed for or purchased by a holder of the number of shares of TWA Stock represented by such Voting Trust Certificate), accompanied by funds sufficient to pay the subscription or purchase price thereof, the Voting Trustees will make such subscription or purchase and will pay the subscription or purchase price to the Corporation or other person making such offer for the account of the registered owner of such Voting Trust Certificate, and (a) in the event TWA Stock has been subscribed for or purchased, will issue an additional Voting Trust Certificate (or scrip therefor) in respect of such TWA Stock to the registered owner of such Voting Trust Certificate, upon receipt by the Voting Trustees of such TWA Stock from the Corporation or other person making such offer, or (b) in the event capital stock of the Corporation (other than TWA Stock) has been subscribed for or purchased, will deliver the certificate or certificates for such capital stock to the registered owner of such Voting Trust Certificate, upon receipt by the Voting

Trustees of such certificate or certificates from the Corporation or other person making such offer.

In case the holders of TWA Stock shall be offered the right to subscribe for or purchase any other securities of the Corporation (other than shares of capital stock of the Corporation), the Voting Trustees, in their discretion, may either (a) follow the procedure set forth in the immediately [fol. 4341] preceding paragraph with respect to rights to subscribe for or purchase shares of capital stock of the Corporation (other than TWA stock) with respect to the rights to subscribe for or purchase such other securities of the Corporation, or (b) by agreement with the Corporation or other person making such offer, waive their right to receive such subscription or purchase rights in respect of the shares of TWA Stock held by the Voting Trustees, on condition that the Corporation or other person making such offer make such offer directly to the registered owners of the Voting Trust Certificates, at the same time and on the same terms that such offer is made to holders of TWA Stock.

The Voting Trustees shall not be required to make any such subscriptions or purchases on behalf of registered owners of Voting Trust Certificates (or to issue any Voting Trust Certificates in respect of the TWA Stock which shall be the subject of any such subscription or purchase offer) unless provided by such owners with funds sufficient to pay (in addition to the subscription or purchase price thereof, as aforesaid) any taxes or other expenses which may be incurred by the Voting Trustees in connection therewith. The Voting Trustees shall not be required in any event to make any such subscription or purchase in respect of deposited shares of TWA Stock represented by scrip. The Voting Trustees shall have full power and discretion to prescribe and regulate any and all details in connection with any such subscription or purchase rights and the exercise thereof including, without limitation, the power to issue subscription warrants covering such subscription or purchase rights to the registered owners of Voting Trust Certificates and to determine the terms and conditions under which such warrants may be assigned and transferred.

NINTH: The Voting Trustees may adopt their own rules of procedure. The action of a majority of the Voting Trustees for the time being in office taken at a meeting, or taken without a meeting by a writing signed by such a majority, shall, except as otherwise herein specifically provided, constitute the action of the Voting Trustees and have the same effect as though taken by all the Voting Trustees. [fol. 4342] Any Voting Trustee may vote or may act in person or by his proxy given to any other Voting Trustee or Voting Trustees or to any other person or persons. Any Voting Trustee may act as a director or officer of the Corporation and may vote for himself as such, and he or any firm of which he is a member or any corporation of which he may be a stockholder, director, officer, agent or employee may purchase, sell, own, hold or deal in Voting Trust Certificates, and may contract with the Corporation or be or become pecuniarily interested in any manner or transaction to which the Corporation or any affiliated company may be a party or in which the Corporation may in any way be concerned, as fully and freely as though he were not a Voting Trustee.

TENTH: The Voting Trustees assume no liability as stockholders, their interest hereunder being that of trustees merely. In voting the TWA Stock represented by the stock certificates held by them hereunder (which they may do either in person or by proxy to any one or more of them or to any other person or persons or to his or their substitute or substitutes), the Voting Trustees will exercise their best judgment to secure the election of suitable directors of the Corporation, to the end that its business and affairs shall be properly managed, and the Voting Trustees will likewise vote and act in other matters in accordance with their best judgment; but they assume no responsibility in respect of such management or in respect of any action taken by them or taken in pursuance of their vote so cast, and no Voting Trustee shall incur any responsibility as trustee or otherwise by reason of any error in law, mistake of judgment, or of any matter or thing done or suffered or omitted to be done under this Agreement except for his own individual malfeasance.

The Voting Trustees assume no responsibility with respect to the validity or genuineness of any of the stock

certificates (or other securities received in lieu thereof) deposited with them hereunder or of any notice, request, assignment, power of attorney, acknowledgement or other paper or document, and they shall be entitled to assume that any such stock certificates (or other securities) so deposited with them and any such other paper or document [fol. 4343] are genuine and valid and what they purport to be and have been signed by the proper parties or party and that any endorsements and assignments thereof are genuine and legal; and in making delivery of stock certificates (or other securities or cash received in lieu thereof), upon the surrender of Voting Trust Certificates representing the same, the Voting Trustees shall be entitled to deliver any stock certificates (or other securities received in lieu thereof) purporting and believed by the Voting Trustees to be genuine and legal.

The Voting Trustees may retain counsel to advise and represent them in any and all matters arising under this Agreement and may employ and fix the compensation of accountants and other agents who may do or perform any acts in behalf of the Voting Trustees within the scope of their respective agencies which the Voting Trustees are authorized hereunder to do or perform, and the reasonable charges of such counsel and other disbursements and expenses made or incurred by the Voting Trustees in the administration of their trust hereunder, including all taxes or other governmental charges imposed upon the Voting Trustees in connection with the transfer or issuance of any stock or Voting Trust Certificates or subscription warrants or in respect of the ownership of the TWA Stock (or other securities received in lieu thereof) held by them as trustees or in respect of any dividends, distributions or other rights in respect of such TWA Stock (or other securities) and the expenses of printing the Voting Trust Certificates (and scrip therefor) shall be borne and promptly paid by the Corporation, and the Corporation hereby agrees to pay or advance the same forthwith from time to time upon the demand of the Voting Trustees. The Voting Trustees may pay any taxes which they shall lawfully be required to pay out of any funds in their hands or of any dividends or distributions and shall have a lien with interest for any sums so

paid upon the respective shares of TWA Stock (or other securities) or dividends or distributions held by the Voting Trustees upon which any such tax may be applicable.

The Voting Trustees shall be entitled to receive and Hughes Tool will pay reasonable compensation for their services hereunder, in such amounts as may be agreed upon from time to time between the Voting Trustees and Hughes [fol. 4344] Tool. In the event that the Voting Trustees or any of them and Hughes Tool are unable to agree upon the compensation to be paid by Hughes Tool for such services, the controversy shall be settled by arbitration in accordance with the Rules of the American Arbitration Association. All expenses of such arbitration, including, without limitation, the fees and expenses of counsel for the Voting Trustees and all other expenses incurred by the Voting Trustees in connection with such arbitration, shall be borne and promptly paid by Hughes Tool.

Without in any wise limiting the generality of the foregoing, the Corporation and Hughes Tool agree, jointly and severally, to indemnify each of the Voting Trustees against, and hold each of them harmless from, any and all claims, damages or liabilities, joint or several, to which he may become subject, and to reimburse each of the Voting Trustees for any legal or other expenses incurred by him in connection with any actions, suits or proceedings to which he may be made a party or in which he may be otherwise involved (including, without limitation, any proceeding instituted by or before any Federal or State governmental or regulatory authority), in so far as such claims, damages or liabilities or such actions, suits or proceedings arise out of or are based upon the administration by the Voting Trustees of their trust under this Agreement or the exercise of any powers or the performance of any duties by the Voting Trustees as herein provided or contemplated, or otherwise arise by reason of his being or having been a Voting Trustee hereunder, except that no Voting Trustee shall be entitled to any such indemnification or reimbursement in relation to matters as to which he shall be finally adjudged in any such action, suit or proceeding to be liable by reason of his own individual malfeasance.

ELEVENTH: Until the delivery as hereinafter provided of stock certificates or the avails thereof in exchange for Voting Trust Certificates, either upon the termination of this Agreement or pursuant to Article Seventeenth or Article Eighteenth, the Voting Trustees shall possess and shall be entitled in their discretion, not subject to any review, to exercise in person or by their proxy, in respect of any and all shares of TWA Stock at the time on deposit under this [fol. 4345] Agreement all rights and powers of every name and nature, including the right to vote thereon or to consent to any and every act of the Corporation.

Without in anywise limiting the generality of the foregoing, the Voting Trustees are specifically authorized in the exercise of their sole and absolute discretion in respect of any and all TWA Stock at any time deposited under this Agreement to vote for or consent to: the election of directors of the Corporation, the removal of directors of the Corporation, any increase, reduction or reclassification of the capital stock of, or any reduction of the capital of, the Corporation, any changes or amendments in or to the Agreement and Act of Consolidation of the Corporation constituting its Certificate of Incorporation, the sale or disposal in any manner of all or any part or parts of the property, assets or business of the Corporation, any consolidation or merger of the Corporation with or into any other corporation, any merger of any other corporation into the Corporation, and any reorganization of the Corporation, and any action with respect to any of the foregoing which any stockholder might lawfully take, and upon any such increase, reduction or reclassification of stock, reduction of capital or merger, consolidation or reorganization becoming effective, to make such surrender of TWA Stock deposited under this Agreement as may be proper or expedient and to receive and hold under this Agreement in lieu thereof any and all stock issued in exchange for such surrendered TWA Stock, and thereafter, in the discretion of the Voting Trustees, they may receive and appropriately issue Voting Trust Certificates against other stock issued pursuant to any such corporate change. For all purposes of this Agreement any such stock so received by the Voting

Trustees in exchange for TWA Stock so surrendered shall take the place of the TWA Stock so surrendered by them.

TWELFTH: Any Voting Trustee may at any time resign by filing at the principal office of the Corporation in the State of Delaware his resignation in writing and concurrently notifying the Corporation, the Agent, the other Voting Trustees and the Notes Agent in writing of such filing of such resignation, and such resignation shall be effective 10 days after the date of such filing of such resignation without any acceptance thereof.

[fol. 4346] Raymond M. Holliday or any successor to Raymond M. Holliday (and such successor's successor and so on in line of succession) may be removed by the registered owners of a majority in interest of the Voting Trust Certificates at the time outstanding by an instrument or concurrent instruments signed by such owners or their duly authorized attorneys-in-fact and filed at said principal office of the Corporation. or

or any successor to or

(and such successor's successor and so on in line of succession) may be removed by the Notes Agent by an instrument signed by or on behalf of the Notes Agent and filed at said principal office of the Corporation.

In the event of the resignation, removal, death, loss of United States citizenship or other inability to act of any Voting Trustee a vacancy shall be deemed to exist in his office and such vacancy may be filled at any time by the appointment of a successor in the manner hereinafter provided. Any such successor to any Voting Trustee shall, at the time of his appointment, be a citizen of the United States.

Any successor to Raymond M. Holliday (and such successor's successor and so on in line of succession) as Voting Trustee shall be appointed by the registered owners of a majority in interest of the Voting Trust Certificates at the time outstanding by an instrument or concurrent instruments signed by such owners or their duly authorized attorneys-in-fact and filed at said principal office of the Corporation.

Any successor to or (and such successor's successor and so on in line of succession) as Voting Trustees shall be appointed by the Notes Agent by an instrument signed by or on behalf of the Notes Agent and filed at said principal office of the Corporation, *provided, however,* that if any vacancy in the office of either of such Voting Trustees shall have continued for more than 10 days, then or , or any successor to or theretofore appointed by the Notes Agent (and such successor's successor and so on in line of succession) may appoint a successor Voting Trustee to fill such vacancy.

[fol. 4347] Concurrently with the filing at said principal office of the Corporation of any such instrument of removal of any Voting Trustee or any such instrument appointing a Voting Trustee, the person filing the same shall notify the Corporation, the Agent, the Voting Trustees (or the other Voting Trustees, as the case may be) and the Notes Agent in writing of such fact and, as promptly as possible after such filing, the Corporation shall mail written notice thereof to the Agent, to the Voting Trustees (or the other Voting Trustees, as the case may be) and to the Notes Agent.

If any vacancy in the office of a Voting Trustee shall have continued for more than 10 days the remaining Voting Trustee or Voting Trustees may exercise all the rights, powers and privileges of the Voting Trustees hereunder until such vacancy or vacancies shall have been filled by the appointment of a successor Voting Trustee or successor Voting Trustees in the manner hereinabove provided.

Any successor Voting Trustee appointed as herein provided shall indicate his acceptance of such appointment by signing a counterpart of this Agreement on file at said principal office of the Corporation and thereupon such successor shall be vested with all the rights, powers, duties and immunities herein conferred upon the Voting Trustees as though such successor had been originally a party to this Agreement as a Voting Trustee. The term "Voting Trustees" as used in this Agreement and in the Voting Trust

Certificates issued hereunder shall apply to and mean the parties of the second part hereto, the survivors or survivor of them and their respective successors.

THIRTEENTH. This Agreement shall terminate on the earliest of the following dates, namely: (a) December 15, 1970 (being less than ten years from the date of execution and delivery of this Agreement), unless the duration of this Agreement shall be extended as provided in Article Eighteenth hereof, or (b) the date on which the Trustee under the Note Indenture shall execute an instrument acknowledging satisfaction of and discharging the same, or (c) the date on which there shall be delivered to the Corporation an instrument signed by or on behalf of the Notes Agent terminating this Agreement.

[fol. 4348] FOURTEENTH: Upon the termination of this Agreement the Voting Trustees in exchange for and upon surrender of any Voting Trust Certificate then outstanding shall, in accordance with the terms hereof and upon payment, if the Voting Trustees shall so require, of a sum sufficient to reimburse them for any tax or other governmental charge in connection with such delivery, deliver certificates for TWA Stock in the amount called for by such Voting Trust Certificate, and the Voting Trustees may require the holder of such Voting Trust Certificate to surrender the same for such exchange. Nothing in this Article Fourteenth or elsewhere in this Agreement contained shall, however, be construed to deprive the Voting Trustees, or their nominee or nominees, of the right as record holder or holders of the deposited shares to vote the same and to execute consents with respect thereto, notwithstanding the termination of this Agreement, so long as they shall continue to be the record holders thereof.

After any termination of this Agreement as above provided, the Voting Trustees may in their discretion deposit any stock or other property then held hereunder with the Agent with authority and instructions to make delivery thereof in exchange for outstanding Voting Trust Certificates as provided in this Article Fourteenth, and thereupon all further obligations or duties of the Voting Trustees under this Agreement or any provision thereof shall cease.

The Voting Trustees shall give the owners of the Voting Trust Certificates notice of any termination of this Agreement prior to the date stated in clause (a) of Article Thirteenth hereof.

FIFTEENTH: All notices to be given to the owners of Voting Trust Certificates shall be given by mailing the same to the registered owners of Voting Trust Certificates addressed to their respective addresses as shown on the books of the Voting Trustees, and any notice whatsoever when mailed by or on behalf of the Voting Trustees to such registered owners of Voting Trust Certificates as herein provided shall have the same effect as though personally served on all holders of Voting Trust Certificates.

SIXTEENTH: Farmers Bank of the State of Delaware is hereby appointed the Agent of the Voting Trustees to receive certificates representing shares of TWA Stock and to [fol. 4349] sign and issue Voting Trust Certificates in the name and as Agent of the Voting Trustees and to transfer Voting Trust Certificates. The Agent now or hereafter appointed by the Voting Trustees may resign upon 30 days' written notice to the Voting Trustees or on such shorter notice as the Voting Trustees may accept. The Voting Trustees shall have the power to remove any Agent and in case of the resignation or removal of any Agent or in case any Agent shall in any way become disqualified from acting, a successor Agent having an office in the City of Wilmington, Delaware, may be appointed by the Voting Trustees and they shall cause notice of such appointment to be given to the Corporation and to the registered owners of Voting Trust Certificates. Upon the resignation, removal or disqualification of any Agent, the Agent shall, upon payment of its proper charges, deliver the custody of the stock certificates held hereunder as well as all other property held hereunder to the successor Agent or otherwise as the Voting Trustees shall direct and the successor Agent shall have and possess all the rights and immunities of the Agent originally named herein.

The Voting Trustees and the Agent shall be fully protected in acting in the discharge of any of their or its duties

hereunder upon any instrument, document or paper believed by them or it to be genuine and to have been executed by the proper parties and the Agent shall be fully protected in issuing any Voting Trust Certificates hereunder, or in taking or in refraining from taking any action hereunder in reliance upon any direction or statement, purporting to be signed by the Voting Trustees or their authorized proxies, as to the existence or nonexistence of any fact or the performance or nonperformance of any act and may accept as conclusive any such statement.

The Agent shall not incur any liability to anyone by reason of anything done or permitted or omitted to be done by it at the request or direction of the Voting Trustees, or because of any disposition which it shall make at the request or direction of the Voting Trustees of any stock certificate or other document or paper or funds or property deposited with it pursuant to any of the provisions hereof, or for any [fol. 4350] action which it may take or refrain from taking in respect thereof upon like request or direction, it being the intent and purpose of this Agreement that such stock certificates, documents, papers, funds and property shall be wholly at the order of and under the control of the Voting Trustees; and no Agent of the Voting Trustees shall incur any liability whatsoever except for its own individual malfeasance in the discharge of its duties as specified in this Article Sixteenth, nor shall it be liable for negligence of its agents, officers or employees, if chosen and retained with due care. The Agent shall be entitled to reasonable compensation for its services hereunder and to be reimbursed for all expenses incurred by it hereunder, and all such reasonable compensation and expenses shall be deemed to be expenses of the Voting Trustees required to be borne and promptly paid by the Corporation as provided in Article Tenth hereof.

SEVENTEENTH: On the terms and subject to the conditions specified in this Article Seventeenth, holders of Voting Trust Certificates complying therewith shall be entitled, prior to the termination of this Agreement, to surrender such Voting Trust Certificates to the Voting Trustees and to obtain in exchange therefor certificates for the shares

of TWA Stock represented by the Voting Trust Certificates so surrendered.

The limited right created by this Article Seventeenth to withdraw TWA Stock from deposit under this Agreement shall be subject to the conditions precedent that each holder of a Voting Trust Certificate desiring to avail himself of such right shall establish by evidence satisfactory to the Voting Trustees that

(A) such holder (1) is Hughes Tool or a Hughes Affiliate, and (2) has sold or has entered into a firm contract to sell the shares of TWA Stock represented by such Voting Trust Certificate in a bona fide public offering (as that term is hereinafter defined), or

(B) such holder (1) is a pledgee, who holds such Voting Trust Certificate under a bona fide pledge thereof to secure a loan or other obligation incurred by [fol. 4351] Hughes Tool or a Hughes Affiliate as to which such pledgor is presently in default, (2) has elected to foreclose such pledge in accordance with its terms, and (3) pursuant to such foreclosure has sold or has entered into a firm contract to sell the shares of TWA Stock represented by such Voting Trust Certificate in a bona fide public offering (as that term is hereinafter defined).

Upon compliance to the satisfaction of the Voting Trustees with the conditions specified in the preceding paragraph with respect to any Voting Trust Certificate, the Voting Trustees shall deliver a certificate or certificates for the shares of TWA Stock represented by such Voting Trust Certificate in exchange for and upon surrender of such Voting Trust Certificate, provided, however, that if the TWA Stock represented by such Voting Trust Certificate shall have been the subject of a firm contract of sale, the Voting Trustees shall not be required to deliver a certificate or certificates for such shares of TWA Stock until the Voting Trustees receive satisfactory evidence that such contract of sale has been or is to be consummated in accordance with its terms. Any such exchange shall be

effected in the manner provided in Article Fourteenth as if this Agreement had been terminated.

Whenever reference is made in this Article Seventeenth to TWA Stock "represented by" a Voting Trust Certificate, such reference shall mean the number of shares of TWA Stock expressed in such Voting Trust Certificate to be deliverable in respect of such Voting Trust Certificate upon the termination of this Agreement.

The term "bona fide public offering", as used in this Article Seventeenth with respect to any sale of shares of TWA Stock, shall mean (a) a bona fide sale of such shares "regular way" (but not pursuant to crossed orders or pursuant to any special offering) on any national securities exchange, whether or not pursuant to a registration statement which shall have become effective under the Securities Act of 1933, as amended, or (b) a bona fide public offering of such shares by or through securities dealers made pursuant to a registration statement which shall have become [fol. 4352] effective under the Securities Act of 1933, as amended, unless (in the case of any sale otherwise than by or on behalf of Hughes Tool or any Hughes Affiliate) the Voting Trustees shall have received an opinion of counsel satisfactory to the Voting Trustees that such public offering does not require the registration of such shares under the Securities Act of 1933, as amended. The term "public offering" shall not include any sale by auction or at broker's board, or any other sale at which the shares being offered might be purchased by a single purchaser or by a group of purchasers acting in concert.

EIGHTEENTH: This Agreement shall not be terminated except as provided in Article Thirteenth hereof, nor shall the duration of this Agreement be extended or this Agreement amended or modified in any other respect except by an instrument or concurrent instruments in writing signed by or on behalf of the Notes Agent, by the Corporation, by all the Voting Trustees and by the registered owners of a majority in interest of the Voting Trust Certificates at the time outstanding or their duly authorized attorneys-in-fact and filed at the principal office of the Corporation in the State of Delaware, provided, however, that in the case of any extension of the duration of this Agreement, (1) the

instruments effecting such extension shall be signed and filed as aforesaid only during the 12-month period immediately preceding the termination date specified in clause (a) of Article Thirteenth, (2) no such extension shall extend the duration of this Agreement beyond the maximum period then permitted by the laws of the State of Delaware, and (3) no such extension shall affect the rights or obligations of any holder of Voting Trust Certificates who shall not consent to such extension.

In the event that the duration of this Agreement shall be extended pursuant to this Article, the Voting Trustees shall forthwith give notice of such extension in the manner provided in Article Fifteenth to all registered owners of Voting Trust Certificates. Each holder of any Voting Trust Certificate who shall not have signed a written [fol. 4353] instrument consenting to such extension, in person or by duly authorized attorney-in-fact, shall be entitled to receive from the Voting Trustees, from and after the termination date specified in clause (a) of Article Thirteenth, a certificate or certificates for TWA Stock in the amount called for by the Voting Trust Certificate held by such holder, in exchange for and upon surrender of such Voting Trust Certificate, and the Voting Trustees shall effect such exchange. Any such exchange shall be effected in the manner provided in Article Fourteenth as if this Agreement had been terminated.

NINETEENTH: Hughes Tool agrees to pay the reasonable compensation of the Notes Agent for its services under this Agreement and the Noteholders' Agreement, including any services rendered by the Notes Agent to the Noteholders, or any of them, in connection with the transactions contemplated by this Agreement and the Noteholders' Agreement and to reimburse the Notes Agent for any out-of-pocket expenses incurred in connection therewith, including the fees and disbursements of any counsel which the Notes Agent may retain in connection with or incident to any of such transactions.

Hughes Tool further agrees that, so long as it or any Hughes Affiliate shall be the beneficial owner of any Voting Trust Certificates, it will not consolidate with, merge into,

or convey or transfer all or substantially all of its property as an entirety to, any person unless the successor formed by or resulting from such consolidation or merger or to which such conveyance or transfer is made shall execute and deliver to the Corporation and the Voting Trustees and the Notes Agent, simultaneously with such consolidation, merger, conveyance or transfer, a supplemental agreement to this Agreement wherein the due and punctual performance of the covenants and agreements herein which are to be performed or observed by Hughes Tool shall be assumed by such successor corporation.

TWENTIETH: All notices and other communications hereunder shall be in writing and shall be addressed to each of the respective parties named below at its address set forth below, unless such address shall have been changed by [fol. 4354] written notice to the other parties of such change, in which event it shall be addressed to such changed address:

(a) If to the Corporation:

Trans World Airlines, Inc.,
c/o The Corporation Trust Company,
100 West Tenth Street,
Wilmington 99, Delaware

with a copy to:

Trans World Airlines, Inc.,
380 Madison Avenue
New York 17, N. Y.

Attention: *Senior Vice President—Finance and Treasurer*

(b) If to the Voting Trustees:

Raymond M. Holliday
c/o Hughes Tool Company,
2200 Gulf Building,
Houston 2, Texas.

.....

.....

(c) If to Hughes Tool:

Hughes Tool Company,
2200 Gulf Building,
Houston 2, Texas.

Attention: *Mr. Raymond M. Holliday,*
Vice-President—Finance

(d) If to the Agent:

Farmers Bank of the State of Delaware,
Wilmington, Delaware

Attention: *Mr. O. H. P. Baldwin,*
President.

[fol. 4355]

(e) If to the Notes Agent:

Irving Trust Company,
One Wall Street,
New York 15, N. Y.

Attention: *Mr. Robert A. Kerr,*
Vice President

Any such request, notice or other communication shall be deemed sufficiently served if mailed by registered or certified mail, postage prepaid, addressed as hereinabove in this Article Twentieth provided.

TWENTY-FIRST: All the covenants, conditions and provisions of this Agreement shall enure to the benefit of and shall be binding upon the parties hereto and the Agent and the Notes Agent and their respective successors and assigns.

TWENTY-SECOND: In the event that any provision of this Agreement shall be held to be invalid or unenforceable in whole or in part under the laws of the State of Delaware, such invalidity or unenforceability shall not in any wise affect the validity of the other provisions of this Agreement. For the purposes of this Article Twenty-second, each and every provision of each Article of this Agreement shall be deemed to constitute a distinct and separate provision from the other provisions of this Agreement.

TWENTY-THIRD: This Agreement may be executed in several counterparts, each of which so executed shall be deemed to be an original, and all of such counterparts shall together constitute but one and the same instrument.

TWENTY-FOURTH: Until the termination of this Agreement one original counterpart hereof and of any amendment or modification hereof shall be filed at the principal office of the Corporation in the State of Delaware and open to the inspection of any holder of stock of the Corporation or of any Voting Trust Certificate daily during business hours.

[fol. 4356] TWENTY-FIFTH: This Agreement has been made in the City of Wilmington, Delaware, and this Agreement and the trust hereby created shall be construed and governed by the laws of said State and the validity and effect of said trust and of this Agreement shall be determined in accordance with the laws of said State.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

TRANS WORLD AIRLINES, INC.

By .....
Vice-President.

Attest:

.....
Secretary.

.....(L. S.)

.....(L. S.)

.....(L. S.)

Voting Trustees

HUGHES TOOL COMPANY

By .....
Vice-President.

Attest:

.....
Secretary.

[fol. 4357] Exhibit D

AGREEMENT

AMONG

IRVING TRUST COMPANY, as Bank Agent

AND

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES and METROPOLITAN LIFE INSURANCE COMPANY

AND

HUGHES TOOL COMPANY

OPTION AGREEMENT

Dated as of December 1, 1960

[fol. 4358] AGREEMENT dated as of December 1, 1960, among IRVING TRUST COMPANY, a New York trust company, as agent for the hereinbelow-mentioned Banks (hereinafter called the *"Bank Agent"*), party of the first part, THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, a New York corporation (hereinafter called *"Equitable"*), party of the second part, METROPOLITAN LIFE INSURANCE COMPANY, a New York corporation (hereinafter called *"Metropolitan"*), party of the third part, and HUGHES TOOL COMPANY, a Delaware corporation (hereinafter called *"Hughes"*), party of the fourth part.

WITNESSETH:

WHEREAS Trans World Airlines, Inc., a Delaware corporation (hereinafter called *"TWA"*), has executed and delivered to Chemical Bank New York Trust Company, as Trustee (hereinafter called the *"Trustee"*), an Indenture of Mortgage dated as of December 1, 1960 (hereinafter called the *"Note Indenture"*), which provides for (a) the delivery of $72,200,000 principal amount of 6% Equipment Mortgage Serial Notes of TWA, maturing serially on December 31, 1961, and quarterly thereafter through December 31, 1964 (hereinafter called *"Serial Notes"*), and (b) the issuance thereunder of $92,800,000 principal amount of 6½% Equipment Mortgage Sinking Fund Notes of TWA, due December 31, 1972 (hereinafter called *"Sinking Fund Notes"*), all said Serial Notes and Sinking Fund Notes being hereinafter collectively called the *"Notes"* (which term, as used herein, shall also mean the Serial Notes or the Sinking Fund Notes, as the context or circumstances may require); and

WHEREAS Hughes is the owner of not less than 5,221,301 shares of Common Stock, par value $5 per share, of TWA, comprising approximately 78% of the outstanding 6,674,155 shares of Common Stock of TWA (hereinafter called *"TWA Stock"*); and

WHEREAS TWA has entered into an agreement dated as of December 1, 1960 (hereinafter called the *"December*

[fol. 4359] *1960 Loan Agreement*"), with Irving Trust Company and the other Banks named therein (hereinafter collectively called the "*Banks*") and the Bank Agent, pursuant to which the Banks have agreed to lend an aggregate of $72,200,000 to TWA, such loans to be evidenced by an equal aggregate principal amount of Serial Notes; and

WHEREAS TWA has entered into agreements dated as of December 1, 1960 (hereinafter called the "*Note Purchase Agreements*"), with Equitable and Metropolitan (hereinafter together called the "*Insurance Companies*"), pursuant to which the Insurance Companies have agreed to purchase from TWA an aggregate of $92,800,000 principal amount of Sinking Fund Notes; and

WHEREAS it is a condition precedent to the obligation of the Banks to advance any moneys to TWA pursuant to the December 1960 Loan Agreement, and it is a condition precedent to the obligations of the Insurance Companies to purchase any Sinking Fund Notes from TWA pursuant to the Note Purchase Agreements, that an Agreement dated as of December 15, 1960 (hereinafter called the "*Voting Trust Agreement*"), among TWA, the Voting Trustees described therein and Hughes, in the form annexed to the Note Purchase Agreements as Exhibit C, shall have been duly executed and delivered by the parties thereto and all shares of TWA Stock owned by Hughes at the date of the Note Purchase Agreements and all shares of TWA Stock subsequently acquired by Hughes or any Hughes Affiliate (as hereinafter defined) shall have been validly subjected to the Voting Trust Agreement; and

WHEREAS the parties hereto are entering into this Agreement in order to afford Hughes the right, at its option, to purchase all the Notes and thereupon to terminate the Voting Trust Agreement; and

WHEREAS the Bank Agent has been duly authorized by the Banks to enter into this Agreement; and

[fol. 4360] WHEREAS, for the purposes of this Agreement, (a) the terms "*Hughes Affiliate*" and "*Notes Agent*" shall have the respective meanings specified in the Voting Trust

Agreement, and (b) the term "*assignee*" shall mean any person acquiring any of the Notes from any of the Banks pursuant to § 1.4 hereof or from any of the Insurance Companies pursuant to § 2.5 hereof and each successor assignee of any such assignee;

NOW, THEREFORE, in consideration of the premises, the parties hereto agree with each other as hereinbelow set forth:

ARTICLE ONE

Bank Option

§ 1.1. On the terms and subject to the conditions hereinafter set forth, the Bank Agent hereby irrevocably grants to Hughes the nontransferable right and option (hereinafter called the "*Bank Option*") to purchase from the Banks and their respective assignees, if any, at any time after December 31, 1961, at the principal amount thereof plus accrued interest thereon to the Bank Closing Date hereinafter specified, all (but not less than all) the Serial Notes then held by the Banks and such assignees, *provided, however,* that the Bank Option may be exercised only as provided in § 1.2 hereof and the right of Hughes to exercise the Bank Option shall be subject to the conditions that (a) Hughes shall, concurrently with its exercise of the Bank Option, exercise the Insurance Company Options granted to Hughes by the Insurance Companies pursuant to Article Two hereof in accordance with their terms, and (b) the purchase by Hughes of the Serial Notes pursuant to the Bank Option shall not require any consent or approval of any Federal or State governmental or regulatory authority or, if such consent or approval is required, the same shall have been validly granted, shall be in full force and effect, and shall be valid and sufficient therefor on the date when Hughes shall give notice of its election to exercise the Bank Option as provided in § 1.2 hereof.

[fol. 4361] § 1.2. The Bank Option may be exercised by Hughes by giving written notice to the Bank Agent, which notice shall state the election of Hughes to exercise the Bank Option, shall fix a date, not less than 60 days nor

more than 90 days after the date upon which such notice shall be given by Hughes, for the delivery of the Serial Notes and the payment of the purchase price thereof (the date of such delivery and payment being herein called the "*Bank Closing Date*") and shall contain (a) a representation and warranty by Hughes that, concurrently with such exercise of the Bank Option, Hughes has exercised the Insurance Company Options and has designated as the Insurance Company Closing Date in its notice of exercise of the Insurance Company Options the same date as it has designated as the Bank Closing Date in its notice of exercise of the Bank Option, and (b) a representation and warranty by Hughes that it is purchasing all the Serial Notes for its own account, for investment, and not with a view to the distribution thereof. Such notice of exercise of the Bank Option shall be accompanied by an opinion of counsel for Hughes, satisfactory in scope and substance to the Bank Agent, to the effect that the exercise of the Bank Option by Hughes has been duly authorized by all requisite corporate action of Hughes and that the purchase by Hughes of the Serial Notes pursuant to the Bank Option does not require any consent or approval of any Federal or State governmental or regulatory authority or, if such consent or approval is required, that the same has been validly granted, is in full force and effect, and is valid and sufficient therefor.

§ 1.3. On the Bank Closing Date the Bank Agent shall deliver or cause to be delivered to Hughes, at the office of Irving Trust Company, One Wall Street, New York, N. Y., the Serial Notes to be sold to Hughes by the Banks and their respective assignees, if any, pursuant to the Bank Option, duly endorsed in blank or accompanied by duly executed assignments in blank (without recourse) and in proper form for transfer, against payment in full of the purchase price by certified or official bank check payable in Federal Reserve funds to the order of the Bank Agent or otherwise [fol. 4362] as directed in writing by the Bank Agent. Hughes shall be liable for, and hereby agrees to pay, any and all transfer taxes which may be imposed upon the sale of the Serial Notes to Hughes pursuant to the Bank Option.

§ 1.4. The Bank Agent agrees that the option granted by it to Hughes pursuant to § 1.1 hereof shall apply to and cover all the Serial Notes at any time held by the Bank Agent and any of the Banks and that neither it nor any of the Banks will sell, assign, transfer or otherwise dispose of any of the Serial Notes at any time held by it except to another of the Banks unless (a) such disposition is made pursuant to an instrument of assignment, duly executed by the assignor and assignee of such Serial Note or Notes, by which the assignee shall agree to assume and to be bound by all the obligations of the assignor under this Agreement in respect of the Serial Note or Notes which are the subject of such assignment, and (b) there shall be endorsed upon the Serial Note or Notes which are the subject of such assignment, prior to the delivery thereof to the assignee, the following legend:

> "This Note is subject to the provisions of an Agreement dated as of December 1, 1960, pursuant to which Hughes Tool Company has the right at its option to purchase this Note on the terms and subject to the conditions set forth in said Agreement, a copy of which is on file with the Trustee under the within mentioned Indenture."

The Bank Agent further agrees that it will promptly deliver to Hughes an executed counterpart of each instrument of assignment executed by any holder of Serial Notes pursuant to the provisions of this Section.

§ 1.5. In the event that Hughes shall exercise the Bank Option and the Insurance Company Options in accordance with their respective terms, and thereafter shall fail to pay in full on the Bank Closing Date the purchase price of all the Serial Notes then subject to the Bank Option and all the Sinking Fund Notes then subject to the Insurance Company Options, upon tender thereof to Hughes as provided in this Agreement, the Bank Option shall become void and shall terminate at the close of business on the Bank Closing Date.

[fol. 4363] § 1.6. The Bank Option shall be non-transferable and any assignment by Hughes of the Bank Option, or of any interest therein or any right created by the terms thereof, without the written consent of the Bank Agent, shall be void.

ARTICLE TWO

Insurance Company Options

§ 2.1. On the terms and subject to the conditions hereinafter set forth, each of the Insurance Companies hereby irrevocably grants to Hughes the non-transferable right and option (hereinafter collectively called the "*Insurance Company Options*") to purchase from it and its assignees, if any, at any time after December 31, 1961, at the purchase price specified and computed as provided in § 2.2 hereof, all (but not less than all) the Sinking Fund Notes then held by it and such assignees, *provided, however*, that the Insurance Company Options may be exercised only as provided in § 2.3 hereof and the right of Hughes to exercise the Insurance Company Options shall be subject to the conditions that (a) Hughes shall concurrently exercise its option thereunder to purchase all (but not less than all) the Sinking Fund Notes then subject to the Insurance Company Options, and (b) the purchase by Hughes of the Sinking Fund Notes pursuant to the Insurance Company Options shall not require any consent or approval of any Federal or State governmental or regulatory authority or, if such consent or approval is required, the same shall have been validly granted, shall be in full force and effect, and shall be valid and sufficient therefor on the date when Hughes shall give notice of its election to exercise the Insurance Company Options as provided in § 2.3 hereof.

§ 2.2. The purchase price to be paid by Hughes for the Sinking Fund Notes upon the exercise of the Insurance Company Options shall be an amount equal to the sum of (a) the principal amount thereof plus accrued interest thereon to the Insurance Company Closing Date hereinafter specified, plus (b) a premium which shall be 22% of the [fol. 4364] principal amount of such Sinking Fund Notes,

if the Insurance Company Closing Date shall be on or before March 31, 1962, and which shall thereafter be reduced by ½ of 1% for each quarterly period of three calendar months which shall elapse from January 1, 1962 to the Insurance Company Closing Date.

§ 2.3. The Insurance Company Options may be exercised by Hughes (a) by giving written notice to the Insurance Companies and to each assignee of any of the Sinking Fund Notes named in an instrument of assignment delivered to Hughes pursuant to § 2.5 hereof, and (b) if the Supplemental Indenture referred to in § 3.1 hereof shall have been executed and delivered, by giving written notice also to the Trustee, as provided in § 3.1(b) hereof, which notice shall state the election of Hughes to exercise the Insurance Company Options, shall fix a date, not less than 60 days nor more than 90 days after the date upon which such notice shall be given by Hughes, for the delivery of the Sinking Fund Notes and the payment of the purchase price thereof (the date of such delivery and payment being herein called the *"Insurance Company Closing Date"*), shall state the purchase price (computed as provided in § 2.2 hereof) to be paid by Hughes for the Sinking Fund Notes, shall state whether or not Hughes has concurrently exercised the Bank Option, and shall contain a representation and warranty by Hughes that it is purchasing all the Sinking Fund Notes for its own account, for investment, and not with a view to the distribution thereof. Such notice of exercise of the Insurance Company Options shall be accompanied by an opinion of counsel for Hughes, satisfactory in scope and substance to the Insurance Companies and their respective assignees, if any (and to the Trustee, if the Supplemental Indenture referred to in § 3.1 hereof shall have been executed and delivered), to the effect that the exercise of the Insurance Company Options by Hughes has been duly authorized by all requisite corporate action of Hughes and that the purchase by Hughes of the Sinking Fund Notes pursuant to the Insurance Company Options does not require any consent or approval of any Federal or State governmental or regulatory authority or, if such consent or approval is required, that the same has been validly

[fol. 4365] granted, is in full force and effect, and is valid and sufficient therefor.

§ 2.4. On the Insurance Company Closing Date the Insurance Companies and their respective assignees, if any, shall deliver or cause to be delivered to Hughes, at the office of Irving Trust Company, One Wall Street, New York, N. Y., the Sinking Fund Notes to be sold to Hughes by the Insurance Companies and such assignees pursuant to the Insurance Company Options, duly endorsed in blank or accompanied by duly executed assignments in blank (without recourse) and in proper form for transfer, against payment in full of the purchase price by certified or official bank checks payable in current New York Clearing House funds to the order of the respective registered owners of such Sinking Fund Notes or otherwise as directed in writing by such registered owners. Hughes shall be liable for, and hereby agrees to pay, any and all transfer taxes which may be imposed upon the sale of the Sinking Fund Notes to Hughes pursuant to the Insurance Company Options. The provisions of this Section (except for the last preceding sentence) are subject to the provisions of § 3.2 hereof.

§ 2.5. Each of the Insurance Companies agrees that the option granted by it to Hughes pursuant to § 2.1 hereof shall apply to and cover all the Sinking Fund Notes at any time held by such Insurance Company and that it will not sell, assign, transfer or otherwise dispose of any of the Sinking Fund Notes at any time held by it, prior to the execution and delivery of the Supplemental Indenture referred to in § 3.1 hereof, unless such disposition is made pursuant to an instrument of assignment, duly executed by the assignor and the assignee of such Sinking Fund Note or Notes, by which the assignee shall agree to assume and be bound by all the obligations of the assignor under this Agreement in respect of the Sinking Fund Note or Notes which are the subject of such assignment. Each of the Insurance Companies further agrees that it will promptly deliver to Hughes an executed counterpart of each instrument of assignment in respect of any Sinking Fund Notes at [fol. 4366] any time held by it which it shall execute pursuant to the provisions of this Section. From and after the execu-

tion and delivery of the Supplemental Indenture referred to in § 3.1 hereof, each of the Insurance Companies and their respective assignees shall be free to sell, assign, transfer or otherwise dispose of any of the Sinking Fund Notes then held by it, without being required to execute the instrument of assignment hereinabove referred to, and any such disposition of such Sinking Fund Notes shall be deemed to have been in compliance with the provisions of this Section for all purposes of this Agreement.

§ 2.6. The respective obligations of each of the Insurance Companies under this Agreement shall be several and not joint. In the event that either of the Insurance Companies shall dispose of all the Sinking Fund Notes at the time held by it, and shall comply with the provisions of § 2.6 hereof in respect of all such Sinking Fund Notes, all obligations of such Insurance Company under this Agreement shall thereupon cease and terminate and Hughes shall not be required to give such Insurance Company any notice of its election to exercise the Insurance Company Options pursuant to § 2.2 hereof. In the event that either of the Insurance Companies shall dispose of less than all the Sinking Fund Notes held by it, and shall comply with the provisions of § 2.5 hereof in respect of the Sinking Fund Notes so disposed of, the obligations of such Insurance Company under this Agreement with respect to the Sinking Fund Notes so disposed of shall thereupon cease and terminate.

§ 2.7. The Insurance Company Options shall be non-transferable and any assignment by Hughes of the Insurance Company Options, or of any interest therein or any right created by the terms thereof, without the written consent of the Insurance Companies and their respective assignees, if any, shall be void.

§ 2.8. In the event that Hughes shall exercise the Insurance Company Options in accordance with their terms, and thereafter shall fail to pay in full on the Insurance Company Closing Date the purchase price of all the Sinking Fund Notes then subject to the Insurance Company [fol. 4367] Options, upon tender thereof to Hughes as pro-

vided in this Agreement, the Insurance Company Options shall become void and shall terminate at the close of business on the Insurance Company Closing Date.

ARTICLE THREE

Exercise of Insurance Company Options Pursuant to Supplemental Indenture

§ 3.1. In the event that TWA shall execute and deliver to the Trustee a Supplemental Indenture to the Note Indenture pursuant to § 2.11 of the Indenture, said Supplemental Indenture shall contain provisions substantially to the following effect:

(a) Hughes shall have the right to purchase all the outstanding Sinking Fund Notes, pursuant to terms of the Insurance Company Options as set forth in Article Two of this Agreement, upon compliance by Hughes with the provisions set forth in Subsections (b) and (c) of this Section.

(b) If Hughes shall, not less than 70 days nor more than 90 days prior to the date fixed by Hughes as the Insurance Company Closing Date in the notice referred to in clause (i) below,

(i) deliver to the Trustee written notice of its election to exercise the Insurance Company Options, in the form required by § 2.3 hereof, accompanied by the opinion of counsel described in said § 2.3 and a certificate of the President or a Vice President of Hughes that Hughes has given or is concurrently giving written notice of such election to all persons entitled thereto pursuant to said § 2.3, and

(ii) concurrently pay to the Trustee (or provide to the satisfaction of the Trustee for the payment of) a sum sufficient to cover all expenses to be incurred by the Trustee in complying with the provisions of Subsections (b) to (d), inclusive, of this Section (including, without limitation, the fees and expenses of counsel for the Trustee),

thereupon the Trustee shall within ten days thereafter give notice to the holders of all Sinking Fund Notes then outstanding to the effect that Hughes has elected [fol. 4368] to exercise the Insurance Company Options, that the purchase price to be paid by Hughes pursuant thereto is a specified amount and that the Insurance Company Closing Date is a specified date, (x) by mailing a copy of such notice to all registered owners of Sinking Fund Notes whose names and addresses appear on the records maintained by the Trustee pursuant to § 2.4 of the Note Indenture and to all other holders of Sinking Fund Notes whose names and addresses have been made available to the Trustee pursuant to § 12.1 or § 12.2 of the Note Indenture and, if any Coupon Sinking Fund Notes (as defined in the Note Indenture) shall be outstanding, (y) by publication of such notice in a daily newspaper (as defined in the Note Indenture) at least once in each of four weeks (which need not be successive) prior to the Insurance Company Closing Date; provided that if notice shall have been given to registered holders of Sinking Fund Notes pursuant to clause (x) of this Subsection (b) and no Coupon Sinking Fund Notes are outstanding at the date of such notice, no notice by publication shall be required to be given pursuant to clause (y) of this Subsection (b)—

(c) If Hughes shall, on or before the Insurance Company Closing Date,

(i) deposit with the Trustee an amount in cash equal to the purchase price (computed as provided in § 22 hereof) of all Sinking Fund Notes outstanding on the Insurance Company Closing Date,

(ii) pay to the Trustee (or provide to the satisfaction of the Trustee for the payment of) a sum sufficient to cover any and all transfer taxes which may be imposed upon the sale of such Sinking Fund Notes to Hughes pursuant to the Insurance Company Options, and

(iii) furnish to the Trustee (if Hughes shall have exercised the Bank Option concurrently with its exercise of the Insurance Company Options) evidence satisfactory to the Trustee that Hughes has purchased and paid for, or has irrevocably deposited with Irving Trust Company funds sufficient to purchase and pay for, all outstanding Serial Notes then subject to the Bank Option,

then, from and after the Insurance Company Closing Date, all Sinking Fund Notes then outstanding shall [fol. 4369] cease to evidence any obligation of TWA whatsoever under the Note Indenture or any right of any kind in the security provided thereby, and such Sinking Fund Notes shall evidence only the right of the holder thereof to receive, upon surrender to the Trustee of the Sinking Fund Notes held by such holder (duly endorsed in blank or accompanied by duly executed assignments in blank, in form satisfactory to the Trustee, in the case of fully registered Sinking Fund Notes or Coupon Sinking Fund Notes registered as to principal), the purchase price thereof deposited by Hughes with the Trustee as provided in this Subsection (c).

(d) On or at any time after the Insurance Company Closing Date, if Hughes shall have complied with the provisions of Subsection (c) of this Section, the Trustee shall authenticate and deliver to or upon the order of Hughes a principal amount of Sinking Fund Notes (in registered form or in the form of Coupon Sinking Fund Notes, as Hughes shall request) equal to the aggregate principal amount of Sinking Fund Notes for the purchase of which Hughes shall have deposited funds with the Trustee as provided in Subsection (c) of this Section.

Said Supplemental Indenture may also contain such other provisions, not inconsistent with the foregoing provisions of this Section, as TWA and the Trustee shall determine.

§ 3.2. From and after the execution and delivery of the Supplemental Indenture referred to in § 3.1 hereof, the provisions of § 2.4 hereof (except for the last two sentences of said Section) shall cease to be operative, and the method by which the Sinking Fund Notes then subject to the Insurance Company Options shall be purchased and paid for by Hughes shall be governed by the provisions of the Supplemental Indenture referred to in § 3.1 hereof.

ARTICLE FOUR

Extension of Voting Trust Agreement

§ 4.1. Hughes agrees that, so long as it or any Hughes Affiliate shall be the beneficial owner of any Voting Trust Certificates issued under the Voting Trust Agreement, it will, at the written request of the Notes Agent (made [fol. 4370] at any time during the 12-month period immediately preceding the termination date specified in clause (a) of Article Thirteenth of the Voting Trust Agreement), take and cause each such Hughes Affiliate and the Voting Trustee nominated by Hughes to take all action requisite on its or their part to extend the duration of the Voting Trust Agreement for such additional period, not exceeding, however, the maximum period then permitted by the laws of the State of Delaware, as shall be specified in such request of the Notes Agent.

ARTICLE FIVE

Miscellaneous

§ 5.1. All directions, requests, notices and other communications hereunder shall be in writing and shall be addressed to each of the respective parties hereto at its address set forth below, unless such address shall have been changed by written notice to the other parties of such change, in which event it shall be addressed to such changed address:

If to the Bank Agent:

Irving Trust Company,
One Wall Street,
New York 15, N. Y.

Attention: *Mr. Robert A. Kerr, Vice-President.*

If to Equitable:

The Equitable Life Assurance Society of
the United States,
261 Madison Avenue,
New York 16, N. Y.

Attention: *Securities Investment Department.*

If to Metropolitan:

Metropolitan Life Insurance Company,
One Madison Avenue,
New York 10, N. Y.

Attention: *Vice-President and Treasurer.*

[fol. 4371]

If to Hughes:

Hughes Tool Company,
2200 Gulf Building,
Houston 2, Texas.

Attention: *Mr. Raymond M. Holliday,*
Vice-President—Finance.

Any notice or other communication by Hughes to any assignee of any of the Notes shall be in writing and shall be addressed to such assignee at its address set forth in the instrument of assignment delivered to Hughes pursuant to § 1.4 or § 2.5 hereof, unless such address shall have been changed by written notice to Hughes of such change, in which event it shall be addressed to such changed address. Any such direction, request, notice or other communication shall be deemed sufficiently delivered or served if mailed by registered mail or certified mail, postage prepaid, addressed as hereinabove in this § 5.1 provided.

§ 5.2. This Agreement shall not be amended or modified or (except as otherwise provided in § 1.5 and § 2.8 hereof) terminated, and none of the conditions herein shall be waived by any party hereto, except with the written consent of each of the parties hereto and each assignee of any of the Notes named in an instrument of assignment delivered to Hughes pursuant to § 1.4 or § 2.5 hereof; provided that such action shall not require the consent of any such party or assignee (other than Hughes) who shall not at the time own, or represent any owner of, any of the Notes.

§ 5.3. All covenants, conditions and provisions of this Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns (including any successor holder of all or any part of the Notes), and no other person shall have any legal or equitable right or remedy to enforce the provisions of this Agreement.

[fol. 4372] § 5.4. This Agreement shall be governed by the laws of the State of New York.

§ 5.5 This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original, and all such counterparts shall together constitute but one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

IRVING TRUST COMPANY, as Agent for the Banks named in the above-mentioned December 1960 Loan Agreement,

By .....
Vice-President

Attest:

.....

Assistant Secretary

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES,

By .....

Treasurer

Attest:

.....

Assistant Secretary

[fol. 4373]

METROPOLITAN LIFE INSURANCE COMPANY,

By .....

Vice-President

Attest:

.....

Assistant Secretary

HUGHES TOOL COMPANY,

By .....

Vice-President

Attest:

.....

Assistant Secretary

[fol. 4374] [Handwritten notation—Original]

[Stamp—Received—Docket Section—Dec 27 12:08 PM '60 —Civil Aeronautics Board]

BEFORE THE
CIVIL AERONAUTICS BOARD

Docket No. 1182

In the matter of the application of

HUGHES TOOL COMPANY

for approval of the acquisition of control of Trans World Airlines, Inc.

SUPPLEMENT TO MOTION OF TRANS WORLD AIRLINES, INC. FOR APPROVAL OF TRANSACTIONS IF SUCH APPROVAL IS NECESSARY

Communications with respect to this document should be sent to:

THOMAS K. TAYLOR
Vice President
Trans World Airlines, Inc.
1000—16th Street, N.W.
Washington 6, D. C.

and

CHADBOURNE, PARKE, WHITESIDE & WOLFF
Attorneys for Trans World Airlines, Inc.
25 Broadway
New York 4, N. Y.

December 27, 1960

[fol. 4375]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the matter of the application of

HUGHES TOOL COMPANY

for approval of the acquisition of control of Trans World Airlines, Inc.

SUPPLEMENT TO MOTION OF TRANS WORLD AIRLINES, INC. FOR APPROVAL OF TRANSACTIONS IF SUCH APPROVAL IS NECESSARY

1. In its motion of December 22, 1960 in this proceeding TRANS WORLD AIRLINES, INC. (herein referred to as "TWA") advised the Board of the current status of its financing arrangements relating to its acquisition of jet aircraft and equipment and requested the Board to issue such additional orders, if any, as might be necessary to enable TWA to complete its financing program. Part of these proposed arrangements included the establishment of a voting trust for the stock of TWA owned by Hughes Tool Company (herein referred to as "Hughes"). As the Board was advised, one of the voting trustees of this voting trust, Raymond M. Holliday, had been appointed by Hughes and the other two voting trustees were to be designated by the Notes Agent on behalf of the prospective lenders under TWA's financing program.

2. TWA has now been advised by the prospective lenders that it is proposed that the other voting trustees be Mr. Ernest R. Breech of Dearborn, Michigan, and Mr. Irving S. Olds, of New York City.

Mr. Olds is a senior partner in the law firm of White & Case. TWA is advised that he is not an officer, or director, or member of, or a stockholder holding a controlling in-

[fol. 4376] terest in, any common carrier or person engaged

in any phase of aeronautics and that he has no other association of the type referred to in Section 409 of the Federal Aviation Act.

Mr. Breech is a director of the Ford Motor Company, the Ford Motor Company, Ltd. (England), the Ford Motor Company of Canada, Ltd., the Lehman Corp. and One William Street Fund, Inc. He is Chairman of Aeronutronic Systems, Inc. TWA does not believe that any of these positions would come within the scope of Section 409 of the Act even if Mr. Breech were to become an officer or director of TWA rather than a voting trustee. However, if the Board believes that Section 409 is or may be applicable, approval of such relationships is respectfully requested.

3. In order to complete TWA's financing program on December 29, 1960 pursuant to existing commitments, all necessary Board approvals must be obtained prior to that date. In view of this, if the Board considers Section 409 to be applicable to any of the relationships set forth above, the Board is asked to waive the applicable requirements of its Economic Regulations or to grant a reasonable period of time after December 29, 1960 within which formal compliance with such regulations may be accomplished.

WHEREFORE, TRANS WORLD AIRLINES, INC. respectfully prays that the Board either (a) enter an order herein amending its Order No. E-15561 and modifying its Order Serial No. 3210, as amended, so that such order will permit the consummation of the proposed financing for TWA, if the Board finds that any such further order is required, and enter an order granting such other approvals under Sections 408 and 409 of the Act (or exemptions therefrom) [fol. 4377] as the Board considers necessary, or (b) enter an order herein determining that no such further orders are required; and grant it such other and further relief as may be appropriate.

Respectfully submitted,

/s/ THOMAS K. TAYLOR
Thomas K. Taylor
Vice President

December 27, 1960

[fol. 4379]

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

EXHIBIT B-6 TO AFFIDAVIT OF CHESTER C. DAVIS

[Stamp—Received—Docket Section—Mar 29 3 25 PM '51 —Civil Aeronautics Board]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the Matter of the Application of

HUGHES TOOL COMPANY

for approval under Section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition of control of

TRANS WORLD AIRLINES, INC.

MOTION FOR APPROVAL OF TRANSACTIONS

Communications with respect to this document should be sent to:

WARREN LEE PIERSON,
Chairman of the Board of Directors,
Trans World Airlines, Inc.,
630 Fifth Avenue,
New York 20, N. Y.

—and—

CHADBOURNE, PARKE, WHITESIDE, WOLFF & BROPHY,
Attorneys for
Trans World Airlines, Inc.,
25 Broadway,
New York 4, N. Y.

[fol. 4380]

BEFORE THE

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the Matter of the Application of

HUGHES TOOL COMPANY

for approval under Section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition of control of

TRANS WORLD AIRLINES, INC.

MOTION FOR APPROVAL OF TRANSACTIONS

TRANS WORLD AIRLINES, INC., a Delaware corporation (herein referred to as "TWA"), respectfully moves that the Board enter an order herein approving (1) the proposed sale by TWA to Hughes Tool Company (herein referred to as "Hughes"), of one Martin Model 404 Airplane pursuant to an agreement dated December 4, 1950 between TWA and Hughes, a copy of which is attached hereto as Exhibit A, (2) the proposed financing by TWA through Hughes of the final instalment of the purchase price of four Lockheed Constellation Model 749A Airplanes by means of a conditional sales contract between TWA and Hughes pursuant to an agreement dated March 2, 1951 between TWA and Hughes, a copy of which is attached hereto as Exhibit B, and an agreement dated March 2, 1951 between TWA, Hughes and Lockheed Aircraft Corporation (herein referred to as "Lockheed"), a copy of which is attached hereto as Exhibit C, (3) the proposed sale by TWA to Hughes of one Lockheed Constellation Model 749A Airplane pursuant to the agreement dated March 2, 1951 between TWA and Hughes, attached hereto as Exhibit II to [fol. 4381] Exhibit B, and (4) the agreements between TWA, Hughes and The Equitable Life Assurance Society of the United States (herein called "Equitable"), copies of which are attached hereto as Exhibits D and E; and that the Board modify its order approving the acquisition by

Hughes of control of TWA, Order Serial No. 3210, issued October 17, 1944, as amended, so as to permit the performance of such transactions and agreements.

In support of such motion, TWA shows to the Board:

A. *Sale of Martin Airplane*

1. By contract dated February 22, 1950, TWA contracted to purchase from The Glenn L. Martin Company 30 Martin Model 404 Airplanes. This contract, referred to as Contract No. 1116, was amended by Contract Change Order No. 4 to provide for the purchase by TWA of an additional 11 Martin Model 404 Airplanes. One of such airplanes was ordered by TWA at the request of and for the account of Hughes. TWA has agreed to sell this airplane to Hughes, subject to approval of the Board, by agreement dated December 4, 1950, a copy of which is attached hereto as Exhibit A.

2. Under such agreement Hughes will pay to TWA all costs incurred by TWA in connection with the purchase of this airplane from The Glenn L. Martin Company and the sale thereof to Hughes.

3. This airplane was included in Contract No. 1116 for the convenience of all the parties to the transaction and so as not to complicate the arrangements under which The Glenn L. Martin Company obtained credit to finance the manufacture of the Model 404 Airplanes and under which TWA and Eastern Air Lines at the same time obtained security for their advance payments made to The Glenn L. Martin Company.

4. The purchase by Hughes of a Martin Model 404 Aircraft is of potential benefit to TWA in that under Contract [fol. 4382] No. 1116 the purchase price of each airplane purchased by TWA is reduced by $12,500 if The Glenn L. Martin Company manufactures more than 100 of such airplanes in continuous production.

B. *Financing of Four Lockheed Constellation Model 749A Airplanes*

5. By contract dated March 2, 1951 between TWA and Hughes, a copy of which is attached hereto as Exhibit B, Hughes has agreed in effect to finance the final instalment of the purchase price of four Lockheed Constellation Model 749 Airplanes which TWA has agreed to purchase from Lockheed pursuant to Contract LD-60. Hughes has agreed to pay to Lockheed the second and final instalment of the purchase price of such airplanes and to sell such airplanes to TWA on a conditional sale basis, subject to the approval herein requested and to the other conditions set forth in such agreement. Lockheed has agreed to this transaction by an agreement dated March 2, 1951 between TWA, Hughes and Lockheed, a copy of which is attached hereto as Exhibit C.

6. Hughes is taking title to these four airplanes and selling them to TWA on a conditional sale basis solely for the purpose of enabling TWA to finance the acquisition of such airplanes. The terms and conditions of sale are substantially the same as those contained in the agreement dated as of February 2, 1950 between Hughes and TWA relating to the sale from Hughes to TWA of six Constellation Model 049 Airplanes on a conditional sale basis, which was approved by Board Order No. E-4160. The details of the arrangements between the parties are more specifically set forth in the conditional sale contract, a copy of which is attached as Exhibit I to Exhibit B.

7. TWA is to pay Hughes for these airplanes only the amounts which Hughes has paid to Lockheed, with interest [fol. 4383] on the unpaid balance as provided in the conditional sale contract. Hughes is providing TWA with financing for the acquisition of these four airplanes on better terms than would otherwise be available to TWA.

8. These four airplanes are required by TWA for use in its domestic and international operations. The addition of these planes to TWA's present fleet will permit increased Constellation service and increased revenue mileage and will thus improve TWA's service to the public.

C. *Sale of One Lockheed Constellation Model 749A Airplane*

9. By contract dated May 31, 1949, referred to as Contract No. LD-60, TWA contracted to purchase from Lockheed 20 Lockheed Constellation Model 749A Airplanes. Upon the exercise of options granted to TWA to purchase additional airplanes, Contract No. LD-60 was amended by Contract Change Order No. 9 to provide for the purchase by TWA of an additional six Lockheed Constellation Model 749A Airplanes. One of such airplanes was ordered by TWA at the request of and for the account of Hughes. TWA has agreed to sell this airplane to Hughes, subject to the approval of the Board, by agreement dated March 2, 1951, a copy of which is attached hereto as Exhibit B. The details of this transaction are set forth in the letter agreement dated March 2, 1951 attached thereto as Exhibit II.

10. Under such letter agreement Hughes will pay to TWA all costs incurred by TWA in connection with the purchase of this airplane from Lockheed and the sale thereof to Hughes.

11. This airplane was included in Contract No. LD-60 for the convenience of all the parties to the transaction. The purchase by Hughes of a Lockheed Constellation Model 749A Airplane is of substantial benefit to TWA in that under Contract No. LD-60 the purchase price of each air-[fol. 4384] plane purchased by TWA is reduced as the number of planes purchased thereunder is increased through the exercise by TWA of option rights.

D. *Agreements for Sale of Capital Stock of TWA.*

12. By contract dated April 5, 1950 between Hughes, TWA and Equitable, TWA agreed that on or before December 31, 1951, it would sell sufficient shares of its unissued capital stock so that the net proceeds to it from such sale, after deducting underwriting commissions and other expenses of such issuance payable by it, should be at least $5,000,000 and Hughes agreed that it would cause

TWA to perform such agreement and that if such shares were not otherwise sold it would itself buy sufficient shares of the capital stock of TWA to provide such net proceeds or would lend to TWA $5,000,000 evidenced by a subordinated note, all as more fully provided in such agreement (herein refererd to as the "1950 Agreement"), a copy of which is attached hereto as Exhibit D.

13. By contract dated January 16, 1951 between Hughes, TWA and Equitable, TWA agreed that on or before December 31, 1952 it would sell sufficient shares of its unissued capital stock (in addition to stock to be sold pursuant to the 1950 Agreement) so that the net proceeds to it from such sale, after deducting underwriting commissions and other expenses of such issuance payable by it, should be at least $5,000,000 and Hughes agreed that it would cause TWA to perform such agreement and that if such shares were not otherwise sold it would itself buy sufficient shares of the capital stock of TWA to provide such net proceeds or would lend to TWA $5,000,000, evidenced by a subordinated note, all as more fully provided in such agreement (herein referred to as the "1951 Agreement"), a copy of which is attached hereto as Exhibit E.

14. Both agreements provide that the obligations of Hughes under such agreements are subject to the approval [fol. 4385] of the Civil Aeronautics Board.

15. The execution of both the 1950 Agreement and the 1951 Agreement were essential parts of the transactions pursuant to which TWA arranged to purchase and finance new fleets of Martin and Constellation aircraft. The execution of the 1950 Agreement was made a condition precedent by Equitable to its consent to the purchase by TWA of 30 Martin Model 404 aircraft and to the creation of indebtedness, secured by a chattel mortgage on such aircraft, required to finance such purchase. The execution of the 1951 Agreement was made a condition precedent by Equitable to its consent to the purchase by TWA of 10 Lockheed Model 1049 Constellation Aircraft and to the creation of indebtedness, secured by a chattel mortgage on such aircraft, required to finance such purchase.

16. The 1950 Agreement and the 1951 Agreement were entered into by Hughes to enable TWA to purchase aircraft required by TWA and essential to its future operations. Their purpose is to aid TWA by providing it with additional equity capital, whether by sale of stock to others, by sale of all such stock to Hughes, by the purchase by Hughes of its pro rata share of stock offered to others or by means of a subordinated loan. The execution and performance of both these agreements will be of substantial benefit to TWA.

WHEREFORE, TWA respectfully moves the Board to enter an order herein approving (1) the sale by TWA to Hughes of one Martin Model 404 Airplane; (2) the financing by Hughes of four Lockheed Constellation Model 749A Airplanes; (3) the sale by TWA to Hughes of one Lockheed Constellation Model 749A Airplane; and (4) the agreements relating to the sale of stock of TWA attached hereto as Exhibits D and E, all as hereinabove set forth; and that the Board modify its order approving the acquisition by Hughes of control of TWA, Order Serial No. 3210, issued October 17, 1944, as amended, so as to permit the perform-
[fol. 4386] ance of such transactions and agreements, and for such other and further relief as may be appropriate.

Respectfully submitted,

TRANS WORLD AIRLINES, INC.

By /s/ WARREN LEE PIERSON

CHADBOURNE, PARKE, WHITESIDE, WOLFF & BROPHY,
Attorneys for
Trans World Airlines, Inc.,
25 Broadway,
New York 4, N. Y.

[fol. 4387]

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

WARREN LEE PIERSON, being duly sworn, deposes and says that he is Chairman of the Board of Directors of TRANS WORLD AIRLINES, INC.; that he has read and is familiar with the contents of the foregoing motion and the exhibits attached thereto; that he intends and desires that in granting or denying the relief requested, the Board shall place full and complete reliance upon the accuracy of each and every statement therein contained; that he is familiar with the facts therein set forth; that to the best of his information and belief every statement contained in the motion is true and no such statement is misleading.

/s/ WARREN LEE PIERSON

Subscribed and sworn to
before me this 23rd day
of March, 1951.

/s/ JANET SENECAL
Notary Public

JANET SENECAL
Notary Public for the State of New York
Qualified in Queens County
No. 41-3594480
Cert. Filed with Co. Clerk New York
and with City Register, New York and Queens
Commission Expires March 30, 1951

[fol. 4388] Exhibit A

HUGHES TOOL COMPANY
5425 Polk Avenue,
Houston, Texas.

December 4, 1950

Trans World Airlines, Inc.,
101 West 11th St.,
Kansas City 6, Missouri.

Gentlemen:

We understand that you have entered into a contract, dated February 22, 1950, with The Glenn L. Martin Company, referred to as Contract No. 1116, relating originally to the purchase by you of thirty Martin Model 4-0-4 airplanes. We also understand that by amendment to Contract No. 1116, pursuant to Contract Change Order No. 4, you have contracted to purchase from The Glenn L. Martin Company eleven additional Martin Model 4-0-4 airplanes and that under Contract No. 1116, as presently amended; similar contractual terms and conditions are applicable to the eleven additional airplanes as to the thirty original airplanes except that the price of each of the eleven additional airplanes may be increased due to escalation. This will confirm our agreement with respect to one of the eleven additional Martin Model 4-0-4 airplanes, hereinafter referred to as "the Airplane", which you have contracted to purchase pursuant to Contract Change Order No. 4.

We agree to purchase, and you agree to sell and transfer, all your right, title and interest in and to the Airplane upon the following terms and conditions:

(1) The Airplane shall be the sixth of said eleven additional airplanes and scheduled for delivery on or before March 31, 1952; provided, however, that if you should subsequently wish to designate one of the eleven additional airplanes other than the sixth in substitution for the sixth, we will not unreasonably withhold

our consent and agreement to such substitution. The Airplane shall be subject to change orders heretofore and hereafter agreed upon between yourselves and The Glenn L. Martin Company, it being agreed that the Airplane is to be substantially similar to the other 10 of said 11 additional Martin Model 4-0-4 Airplanes, but you shall use your best efforts to obtain the agreement of The Glenn L. Martin Company to any special changes we may reasonably request with respect to the Airplane.

(2) During manufacture of said eleven additional airplanes, you shall perform the same functions of inspection; plant representation, and general contract administration without distinction as among said eleven additional airplanes; i.e., on the same basis and to the same standards with respect to the Airplane as apply to the other ten airplanes which are for your own account.

[fol. 4389] (3) Upon your receipt of notice from The Glenn L. Martin Company of the date they expect the Airplane to be ready for flight tests, you shall notify us thereof, and as promptly as possible thereafter you shall advise us of the amount of the balance of purchase price due to The Glenn L. Martin Company upon delivery. We shall promptly put you in funds to pay such balance of purchase price, and we hereby authorize you to pay such balance of purchase price to The Glenn L. Martin Company against delivery of the Airplane, and in our name and on our behalf to accept delivery of the Airplane and execute all instruments and take all steps appropriate to the end that delivery of the Airplane for our account be effected at the point and upon the basis set out in your contract with The Glenn L. Martin Company, with title vesting in us and with all risk and expense for our account, and following delivery to ferry the Airplane to such other point within the United States as we may request.

(4) We shall pay the same purchase price for the Airplane as you are obligated to pay The Glenn L.

Martin Company, such payment to be made as follows:

(a) Forthwith upon fulfillment of the conditions set forth at paragraph 8 hereof, we shall reimburse you for all installments of the purchase price of the Airplane which you have theretofore made to The Glenn L. Martin Company.

(b) Upon notice from you, we shall forthwith put you in funds to meet when due all installments of the purchase price of the Airplane which become due subsequent to fulfillment of the conditions set forth in paragraph 8 hereof.

(5) In addition to the purchase price of the Airplane we shall pay you, following fulfillment of the conditions set forth in paragraph 8 hereof and as the sums become ascertained in normal course:

(a) Such sums, if any, as you may be required to pay to The Glenn L. Martin Company with respect to the Airplane as an adjustment of the purchase price thereof, pursuant to the contract between yourselves and The Glenn L. Martin Company, including without limitation adjustments due to change orders.

(b) Such sums, if any, as are represented by any sales or use tax imposed upon or paid by you by reason of the sale or use of the Airplane or the purchase by us hereunder.

(c) Such sums as represent, under sound accounting principles, a proper allocation to the Airplane of its proportionate share of the general expenses heretofore and hereafter incurred by you in negotiating your general contractual arrangements with The Glenn L. Martin Company, and the performance of functions of inspection, plant representation, and general contract administration, plus the total of [fol. 4390] such sums, if any, as represent direct out-of-pocket costs and expenses to you solely on account of, and attributable to, the Airplane and

acceptance of delivery and ferrying thereof, including, without limitation, the cost and expenses incidental to your providing customer furnished equipment for the Airplane.

(6) In adjustment of the sums we are obligated to pay you, you shall credit or pay to us, as appropriate, any credits allowed or payments made to you by The Glenn L. Martin Company with respect to the Airplane pursuant to your contractual arrangements with The Glenn L. Martin Company, and you shall remit to us such interest as you receive from The Glenn L. Martin Company on account of installment payments with respect to the Airplane for the period subsequent to the date we have reimbursed you for such installment payments, and you shall remit to us any repayments by The Glenn L. Martin Company of installment payments with respect to the Airplane for which we have reimbursed you.

(7) Following our reimbursement to you of any installment payments you have made with respect to the Airplane, you shall, subject to any consents or waivers required by the provisions of any contractual arrangements to which you are a party, execute any instruments in the nature of assignment or to evidence subrogation which we may reasonably request in view of our interest in the Airplane and our rights and obligations hereunder. It is understood that you make no warranties whatsoever regarding the Airplane but will convey to us all your assignable rights and interests in all manufacturers' warranties and guarantees acquired by you pursuant to your agreement with The Glenn L. Martin Company.

(8) This agreement is subject to any approval, consent or clearance of the Civil Aeronautics Board which may be required pursuant to the Civil Aeronautics Act of 1938, as amended.

If the foregoing correctly sets forth the agreement between us, please execute and return the enclosed copy hereof, and this shall constitute the contract between us.

Very truly yours,

HUGHES TOOL COMPANY

By /s/ NOAH DIETRICH
Executive Vice President

Agreed:

TRANS WORLD AIRLINES, INC.

By /s/ WARREN LEE PIERSON
Chairman of the Board

Dated: March 2, 1951

[fol. 4391]

Exhibit B

March 2, 1951

Hughes Tool Company
7000 Romaine
Hollywood, California

Gentlemen:

This will confirm our agreement with respect to the last five (of the total twenty-six) Lockheed Model 749A airplanes which we have agreed to purchase from Lockheed Aircraft Corporation pursuant to Contract No. LD-60, as amended, such last five airplanes being hereinafter sometimes called the "Airplanes."

I. With respect to four of the Airplanes (which shall be the first four thereof delivered unless we designate an Airplane other than the fifth Airplane delivered pursuant to II below):

1. You shall pay to Lockheed Aircraft Corporation the second and final installment of purchase price with respect to each of such Airplanes upon notice from us, from time to time, stating the amount of such second and final installment and that the Airplane to whose

purchase such payment is applicable is ready for delivery by Lockheed Aircraft Corporation.

2. Upon your making each such payment provided for by subparagraph 1., we shall:

a. accept delivery from Lockheed Aircraft Corporation of the Airplane to whose purchase such payment is applicable, and effect with Lockheed Aircraft Corporation the transfer of title to such Airplane to you; and

b. retain possession of such Airplane pursuant and subject to that certain "Conditional Sale Contract" of even date between us attached hereto and marked "Exhibit I".

II. With respect to one of the Airplanes (which shall be the fifth of the Airplanes delivered unless we designate a different Airplane in lieu of the fifth delivered):

1. You agree to purchase, and we agree to sell and transfer, all our right, title and interest in and to such Airplane upon your making payment therefor and upon all the other terms and conditions with respect thereto set out in that certain Letter Agreement of even date between us attached hereto and marked "Exhibit II".

III. This agreement and the "Conditional Sale Contract" and the Letter Agreement attached hereto are subject to there having been obtained, on or before March 31, 1951 or such extension of such date as may be agreed upon in writing, any approval, consent or clearance of the C.A.B. which may be required pursuant to the Civil Aeronautics Act of 1938, as amended, and neither this agreement nor such "Conditional Sale Contract" nor such [fol. 4392] Letter Agreement shall be effective for any purpose unless and until such approval, consent or clearance shall have been obtained.

If the foregoing correctly sets forth our agreement, please execute and return the copy hereof enclosed for that purpose.

Very truly yours,

TRANS WORLD AIRLINES, INC.

By /s/ ERLE M. CONSTABLE
Treasurer

Confirmed:

HUGHES TOOL COMPANY

By /s/ T. A. SLACK
Vice President

[fol. 4393] Exhibit I

CONDITIONAL SALE CONTRACT

Contract of Conditional Sale made as of the 2nd day of March, 1951, between HUGHES TOOL COMPANY, a Delaware corporation (hereinafter sometimes called the "Seller"), with its principal place of business at Houston, Texas, and TRANS WORLD AIRLINES, INC. (formerly Transcontinental & Western Air, Inc.), a Delaware corporation (hereinafter sometimes called the "Buyer"), with its principal place of business at Kansas City, Missouri,

THE INTEREST OF THE SELLER IN THE AIRCRAFT AND EQUIPMENT COVERED HEREBY IS THAT OF A CONDITIONAL SELLER AND THE INTEREST OF THE BUYER THEREIN IS THAT OF A CONDITIONAL BUYER.

WITNESSETH:

WHEREAS, TWA has contracted to purchase from Lockheed Aircraft Corporation (hereinafter sometimes called "Lockheed") certain Lockheed Model 749A Constellation airplanes, and, with respect to each of four of the last five thereof to be delivered (such four being hereinafter sometimes called the "Airplanes") TWA has paid to Lock-

heed a first installment of purchase price in the amount of $230,625; and

WHEREAS, Hughes has agreed to pay to Lockheed the second and final installment of purchase price with respect to each of the Airplanes and in consideration thereof will obtain title to the Airplanes as delivered by Lockheed; and

WHEREAS, Hughes desires to sell and TWA desires to buy the Airplanes pursuant to the conditional sale arrangements set forth herein,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. Seller agrees to sell to Buyer and Buyer agrees to purchase the Airplanes upon the terms and conditions hereinafter set forth. The serial numbers applicable to the respective Airplanes, as soon as determined, shall be set out in an amendment to this Contract.

2. Simultaneously upon conveyance of title to each Airplane from Lockheed to Seller, such Airplane shall forthwith be delivered to Buyer and Buyer shall accept such delivery at Burbank, California.

3. The purchase price of each Airplane for purposes of this Contract shall be the amount which Seller shall have paid Lockheed as the second and final installment of the purchase price under Contract No. LD-60, as amended, and such purchase price shall be paid by Buyer to Seller in sixty equal consecutive monthly installments, together with interest on the unpaid balance at the rate of three percent (3%) per annum. The first of such payments relating to [fol. 4394] each Airplane shall be made on the first day of the month next following the month in which the Airplane is delivered and one of the remaining payments shall be made on the first day of each month thereafter until the whole of such purchase price shall have been paid. All payments shall be made to the Seller at the Hughes Tool Company, Houston, Texas.

4. Title to the Airplanes shall not pass to Buyer by delivery, but shall remain in Seller until such time as the purchase price shall have been paid in full and Buyer shall have paid to Seller all other sums then due and payable to Seller hereunder, whereupon absolute title to the Airplanes shall pass to Buyer.

5. Upon the happening of any one or more of the following events, namely:

(a) default in making any payment, in the manner herein specified, of any monthly installment of the purchase price of the Airplanes and such default shall continue unremedied for five (5) days after written notice thereof shall have been delivered by Seller to Buyer; or

(b) default shall be made by the Buyer in the observance or performance by the Buyer of any other covenant or agreement contained herein, and such default shall continue unremedied for thirty (30) days after written notice thereof shall have been delivered by Seller to Buyer; or

(c) the Buyer shall become insolvent, or shall file a voluntary petition in bankruptcy, or shall file a voluntary petition or answer seeking or consenting to reorganization pursuant to or purporting to be pursuant to the Acts of Congress relating to bankruptcy or any other statute, state or Federal, for the relief of debtors, or shall be adjudicated a bankrupt, or shall make an assignment for the benefit of creditors, or shall consent to the appointment of a receiver or trustee of or for it or a substantial part of its property; or

(d) an order shall be entered pursuant to or purporting to be pursuant to the Acts of Congress relating to bankruptcy or any other statute, state or Federal, for the relief of debtors approving a petition seeking a reorganization of, or if an order shall be entered appointing a receiver or trustee of, or for any substantial part of the property of, or if a warrant of attachment shall be issued against any substantial part of the

property of, the Buyer, and any such order is not dismissed or stayed within sixty (60) days from its entry or such attachment is not dismissed or bonded within thirty (30) days from its levy; or

(e) the Debentures at the time issued and outstanding under that certain Indenture, dated as of December 1, 1945, between Buyer and The Commercial National Bank and Trust Company of New York, as Trustee, as said Indenture may have heretofore been or may hereafter be amended, shall be declared and become due and payable, prior to the date of maturity of such Debentures as set forth therein, upon the occurrence of any of the "events of default" described in said Indenture, as amended (and the Buyer hereby agrees to notify the Seller of any declaration of default forthwith upon the receipt thereof); then Seller may at once [fol. 4395] (or at any later time) proceed to take possession of the Airplanes in any manner provided by law, or Seller may at its option, and Seller is hereby empowered to, with or without legal process, and with or without demand, enter upon the premises where the Airplanes may be and take possession thereof and remove the same. Seller may resell the Airplanes, so retaken, at public or private sale, with or without having the Airplanes at the place of sale, and upon such terms and in such manner as Seller may determine. Notice of the intention of Seller to so sell the Airplanes shall be given by Seller to Buyer at least ten (10) days prior to the time of such sale. Seller may bid and purchase at any such public sale. From the proceeds of any such sale, Seller shall deduct all expenses for retaking, repairing, storing and selling the Airplanes, including any reasonable attorneys' fees incurred. The balance of such proceeds shall be applied to the payment of all sums owing to Seller under this agreement and any surplus of such proceeds remaining shall be paid to Buyer or to whoever may be lawfully entitled to receive the same. Buyer shall be under no obligation to Seller for any deficiency resulting from any such sale or to make any payments on account of the

purchase price of any Airplane falling due after Seller has taken possession of such Airplane pursuant to this provision.

6. From and after delivery of the Airplanes to Buyer and until absolute title thereto is vested in Buyer or its nominee, or Seller repossesses the Airplanes,

(1) Buyer shall procure and maintain at its expense public liability, passenger liability and property damage insurance in such amounts and with such companies as shall be satisfactory to Seller, covering Seller's liability as holder of legal title to the Airplanes. The policies evidencing such insurance shall contain such provisions as shall be satisfactory to Seller and shall name Seller as assured.

(2) Buyer shall at its expense maintain all risk aircraft hull insurance in respect of the Airplanes in favor of Buyer and Seller, as their interests may appear, in an amount at least sufficient to cover the then unpaid portion of the purchase price of the Airplanes. If any such Airplane shall be lost, destroyed or damaged to such an extent that repair thereof is impractical, such insurance shall be paid to the Seller to the extent of the unpaid balance of the purchase price of such Airplane together with any accrued and unpaid interest thereon, plus all other amounts then due to Seller hereunder. Upon such payment to the Seller of insurance to the extent of the unpaid balance of the purchase price of any Airplane, absolute title to the Airplane so damaged or to any parts of an Airplane so destroyed shall vest in Buyer and Seller shall deliver to Buyer such proper documents of title with respect thereto as Buyer may reasonably require. Buyer shall be under no obligation to make any payments on account of the purchase price of such Airplane falling due after such loss, destruction or damage. Any insurance proceeds in excess of the amount payable to the Seller, and any insurance proceeds payable as a result of damage not rendering repair impractical, shall be payable to Buyer or its designee.

[fol. 4396] 7. Buyer may at any time pay to Seller the unpaid balance of the purchase price of the Airplanes, or any part thereof, without premium or penalty.

8. Upon the payment to Seller of the balance of the purchase price of the Airplanes together with all other amounts owing to Seller hereunder, Seller shall deliver to Buyer at such place in the United States as Buyer may designate (1) a bill of sale duly vesting in Buyer the title to the Airplanes free and clear of all liens, claims, charges and encumbrances attaching subsequent to the delivery of the Airplanes to Seller and not arising out of the possession, use or operation of the Airplanes by Buyer, and (2) such other appropriate documents of title with respect thereto as Buyer may reasonably require.

9. In the event any sales tax or use tax is hereafter imposed upon or paid by Seller by reason of the sale or use of the Airplanes or the purchase thereof by Seller, then in addition to the sales price provided for in paragraph 3, Buyer shall pay to Seller the amount thereof, upon demand.

10. Buyer shall furnish Seller forthwith and from time to time thereafter at reasonable intervals, all such information concerning Buyer's financial condition, including balance sheets and forecasts of earnings, as is customarily furnished to a commercial bank holding or considering the acceptance of unsecured notes of a borrower.

11. The Buyer agrees that it will pay and discharge all taxes, assessments, governmental charges and all charges for keep, repairs, storage, maintenance or accessories, which if unpaid might become a lien, charge or encumbrance upon or against any of the Airplanes; and upon the failure of the Buyer so to do the Seller may make any such payment; provided, however, that nothing herein contained shall require the Buyer to pay such tax, assessment or charge so long as the Buyer shall in good faith contest the validity thereof and shall furnish the Seller such bond or indemnity as the Seller shall require, unless, in the judgment of the Seller, forfeiture is likely to result from any such failure to pay. Any sum or sums so paid by the Seller, together with interest thereon at the highest lawful contract rate, shall be and

become a part of the sum which the Buyer is required to pay under this contract, and shall immediately, without demand, be due and be repaid by the Buyer to the Seller.

The Buyer will, upon written request from the Seller, (1) reimburse the Seller for all filing or recording fees incurred in connection with filing or recording or refiling or re-recording this contract and all supplements and additions hereto, if any; (2) execute and deliver to the Seller all such further documents and instruments and do such further acts as may be necessary to perfect the rights of the Seller herein contemplated; and (3) furnish to the Seller at reasonable intervals reports and certificates setting forth all the information necessary to inform the Seller as to the continued existence, location and condition of the Airplanes. The Seller shall also have the right to inspect the Airplanes at all times when the same are not in use and when such inspection can be had without undue inconvenience or expense to the Buyer.

[fol. 4397] 12. Buyer agrees to maintain the Airplanes in good repair and working condition at its own expense, except any airplane lost, destroyed or so damaged that insurance with respect thereto is payable to the Seller pursuant to paragraph 6 hereof. Subject to the proper performance of such covenant, the Buyer may make repairs and replacements to the Airplanes and may substitute for engines, propellers and any other equipment installed in or attached to the Airplanes, engines, propellers or other equipment of substantially the same kind and value. In case of any such substitution title to the equipment substituted shall immediately be vested in Seller and shall become subject to the provisions of this Conditional Sale Contract while title to the equipment for which such substitution has been made will immediately vest in Buyer.

13. Until title to the Airplanes shall have passed to the Buyer hereunder, the Buyer shall have no right, power of authority to sell, transfer, assign, mortgage or encumber or in any other manner whatsoever dispose of the Airplanes or any part thereof (except as provided in paragraph 12 hereof) or any interest therein, and the Buyer hereby agrees that, except as permitted by paragraph 12

hereof, the Buyer will not (voluntarily or involuntarily), sell, transfer, mortgage, encumber or in any other manner whatsoever dispose of the Airplanes or any part thereof or any interest therein. Buyer agrees, except as provided herein, that the Airplanes will be used exclusively for its commercial air transport operations and related activities and that it will not permit the Airplanes to be used or possessed by others. Buyer may permit the use of the Airplanes by other airlines with which Buyer enters into interchange agreements provided that any such use by other airlines shall for the purposes of this agreement be considered to be use by the Buyer.

14. To the extent, if any, that there is a conflict between any of the provisions of this agreement and any of the provisions of the Chattel Mortgage dated as of March 25, 1948 between the Buyer and Bankers Trust Company, as Trustee, or of the Chattel Mortgage dated as of August 4, 1949 between the Buyer and Mellon National Bank & Trust Company, as Trustee, or of the chattel mortgages contemplated by the 1950 Credit Agreement and the 1951 Credit Agreement between the Buyer and Mellon National Bank and Trust Company, as agent, and the Lending Banks named therein, the provisions of such chattel mortgages shall prevail and the provisions of this agreement shall be deemed amended to the extent necessary to avoid such conflict.

15. Before delivery of each Airplane to Buyer hereunder, Buyer will cause to be fastened thereon in a location reasonably adjacent to, and not less prominent than that of, the airworthiness certificate for such Airplane, a name plate no larger than four inches by seven inches bearing the following legend:

> "Hughes Tool Company holds legal title to this Airplane as Conditional Seller."

Buyer shall maintain such name plate in such location or in one of at least equal prominence and visibility at all times. Buyer may affix to the Airplanes Buyer's name, insignia or other legends customarily displayed by Buyer on its airplanes.

[fol. 4398] 16. Buyer shall indemnify and hold harmless Seller, its agents and its employees from any and all liability for losses, expenses, damages, demands and claims in connection with or arising out of any death of, or injury or alleged injury or damage to, persons or property sustained, or alleged to have been sustained, in connection with or arising or alleged to have arisen out of Buyer's possession, use or operation of the Airplanes and Buyer agrees to handle any claim and defend any suit or action brought against Seller, its agents or its employees, or any of them, based on any such death, injury or damage, or alleged injury or damage, and to pay all damages, costs and expenses, including attorneys' fees, in connection therewith or resulting therefrom.

Buyer's liability to Seller under this paragraph 16 is conditioned upon Seller's promptly giving notice to Buyer of institution of such suit or action or of receipt of such claim or demand. Buyer shall have the option at any time to conduct negotiations with the party or parties making any such claim or demand, and may intervene in any such suit or action. Whether or not Buyer intervenes in any such suit or action, it shall be entitled to assume, conduct or control the defense thereof, and Seller shall not settle or discharge any such claim, demand, suit, action or judgment without prior notice to and the consent of Buyer.

In Witness Whereof the parties hereto have executed and delivered this agreement as of the day and year first above written.

Hughes Tool Company

By /s/ T. A. Slack

(Corporate Seal)

Attest:

/s/ Roy H. Sherwood

Trans World Airlines, Inc.

By /s/ Erle M. Constable
Treasurer

(Corporate Seal)

Attest:

/s/ J. L. Weller
Assistant Secretary

[fol. 4399] Exhibit II

March 2, 1951

Trans World Airlines, Inc.
Kansas City
Missouri

Gentlemen:

We understand that you have entered into a contract, dated May 31, 1949, with Lockheed Aircraft Corporation, referred to as Contract No. LD-60 which, as amended by Change Order No. 1, related originally to the purchase by you of twenty Lockheed Model 749A airplanes of the Constellation type. We also understand that by further amendment to Contract No. LD-60, pursuant to Change Order No. 9, you have contracted to purchase from Lockheed Aircraft Corporation six additional Lockheed Model 749A airplanes. This will confirm our agreement with respect to one airplane of the six additional Lockheed Model 749A airplanes undelivered on the date hereof (such one airplane being hereinafter referred to as "the Airplane"), which you have contracted to purchase pursuant to Change Order No. 9.

We agree to purchase, and you agree to sell and transfer, all your right, title and interest in and to the Airplane upon the following terms and conditions:

(1) The airplane shall be the sixth of said six additional airplanes and scheduled for delivery on or before August 31, 1951; provided, however, that if you should subsequently wish to designate one of the six additional airplanes other than the sixth in substitution for the sixth, we will not unreasonably withhold our consent and agreement to such substitution. The Airplane shall be subject to change orders heretofore and hereafter agreed upon between yourselves and Lockheed Aircraft Corporation, it being agreed that the Airplane is to be substantially similar to the other 5 of said 6 additional Lockheed Model 749A Airplanes, but you shall use your best efforts to obtain the agreement of Lockheed Aircraft Corporation to any special changes we may reasonably request with respect to the Airplane.

(2) During manufacture of said six additional airplanes, you shall perform the same functions of inspection, plant representation, and general contract administration without distinction as among said six additional airplanes; i.e., on the same basis and to the same standards with respect to the Airplane as apply to the other five airplanes which are for your own account.

(3) Upon your receipt of notice from Lockheed Aircraft Corporation of the date they expect the Airplane to be ready for flight tests, you shall notify us thereof, and as promptly as possible thereafter you shall advise us of the amount of the balance of purchase price due to Lockheed Aircraft Corporation upon delivery. We shall promptly put you in funds to pay such balance of purchase price, and we hereby authorize you to pay such balance of purchase price to Lockheed Aircraft Corporation against delivery of the Airplane, and in our name and on our behalf to accept delivery of the Airplane and execute all instruments and take all steps appropriate to the end that delivery of the Airplane for our account be effected at Las Vegas, [fol. 4400] Nevada, upon the basis set out in your contract with Lockheed Aircraft Corporation, with title vesting in us and with all risk and expense for our account, and following delivery to ferry the Airplane to such other point within the United States as we may request.

(4) We shall pay as the purchase price for the Airplane the purchase price which you are obligated to pay Lockheed Aircraft Corporation and which is properly allocable to the Airplane, such payment to be made as follows:

(a) Forthwith upon fulfillment of the conditions set forth at paragraph 8 hereof, we shall reimburse you for the installment of the purchase price of the Airplane which you have theretofore made to Lockheed Aircraft Corporation, with interest thereon from the date you paid such installment to the date of such reimbursement at the rate of 3% per annum.

(b) Upon notice from you, we shall forthwith put you in funds to meet when due the installment of the purchase price of the Airplane which becomes due sub-

sequent to fulfillment of the conditions set forth in paragraph 8 hereof, and shall further pay you any additional sums due you on account of the purchase price of the Airplane.

(5) In addition to the purchase price of the Airplane we shall pay you, following fulfillment of the conditions set forth in paragraph 8 hereof and as the sums become ascertained in normal course:

(a) Such sums, if any, as you may be required to pay to Lockheed Aircraft Corporation with respect to the Airplane as an adjustment of the purchase price thereof, pursuant to the contract between yourselves and Lockheed Aircraft Corporation, including without limitation adjustments due to change orders.

(b) Such sums, if any, as are represented by any sales or use tax imposed upon or paid by you by reason of the sale or use of the Airplane or the purchase by us hereunder.

(c) Such sums as represent, under sound accounting principles, a proper allocation to the Airplane of its proportionate share of the general expenses heretofore and hereafter incurred by you in negotiating your general contractual arrangements with Lockheed Aircraft Corporation, and the performance of functions of inspection, plant representation, and general contract administration, plus the total of such sums, if any, as represent direct out-of-pocket costs and expenses to you solely on account of, and attributable to, the Airplane and acceptance of delivery and ferrying thereof, including, without limitation, the cost and expenses incidental to your providing customer furnished equipment for the Airplane.

(6) In adjustment of the sums we are obligated to pay you, you shall credit or pay to us, as appropriate, any credits allowed or payments made to you by Lockheed Aircraft Corporation with respect to the Airplane pursuant to [fol. 4401] your contractual arrangements with Lockheed Aircraft Corporation (except to the extent such payments

or credits are properly applicable to other airplanes under sound accounting practice) and you shall remit to us any repayments by Lockheed Aircraft Corporation of installment payments with respect to the Airplane for which we have reimbursed you.

(7) Following our reimbursement to you of any installment payments you have made with respect to the Airplane, you shall, subject to any consents or waivers required by the provisions of any contractual arrangements to which you are a party, execute any instruments in the nature of assignment or to evidence subrogation which we may reasonably request in view of our interest in the Airplane and our rights and obligations hereunder. It is understood that you make no warranties whatsoever regarding the Airplane but will convey to us all your assignable rights and interests in all manufacturers' warranties and guarantees acquired by you pursuant to your agreement with Lockheed Aircraft Corporation.

8. This Letter Agreement is subject to there having been obtained, on or before March 31, 1951 or such extension of such date as may be agreed upon in writing, any approval, consent or clearance with the C.A.B. which may be required pursuant to the Civil Aeronautics Act of 1938, as amended, and this Letter Agreement shall not be effective for any purpose unless and until such approval, consent or clearance shall have been obtained.

If the foregoing correctly sets forth the agreement between us, please execute and return the enclosed copy hereof, and this shall constitute the contract between us.

Very truly yours,

HUGHES TOOL COMPANY

By /s/ T. A. SLACK
Vice President

Agreed:

TRANS WORLD AIRLINES, INC.

By /s/ ERLE M. CONSTABLE
Treasurer

[fol. 4402]

Exhibit C

SL/54624

March 2, 1951

Lockheed Aircraft Corporation
Burbank, California

Gentlemen:

The undersigned request your concurrence and agreement as hereafter set forth. For convenience, hereinafter you will sometimes be referred to as "Lockheed", Trans World Airlines, Inc. will sometimes be referred to as "TWA", and Hughes Tool Company will sometimes be referred to as "Hughes".

1. It is contemplated that TWA will finance through Hughes the final installment of the purchase price of four of the last five (of the total twenty-six) Lockheed Model 749A Airplanes which TWA has agreed to purchase from Lockheed pursuant to Contract No. LD-60, as amended. Incidental to such financing, it is contemplated that Hughes shall acquire title to four of said last five Airplanes for security purposes directly from Lockheed, and forthwith convey each of such four Airplanes to TWA subject and pursuant to conditional sale arrangements between Hughes and TWA. It is further contemplated that Hughes shall purchase full legal and beneficial ownership of the fifth of said last five airplanes, and TWA shall give Lockheed proper and timely notice designating such fifth airplane for this purpose.

2. It is therefore agreed, notwithstanding anything to the contrary in said Contract No. LD-60, as amended, but subject to the condition stated in paragraph 4 hereof, that with respect to each of said last five Airplanes:

a. Hughes shall pay Lockheed, in the form and at the place specified in said Contract No. LD-60, as amended, the final installment of purchase price applicable to each Airplane, payable upon Lockheed delivering each Airplane in accordance with said Contract

No. LD-60, as amended; and payment by Hughes shall discharge the obligation of TWA to make such payment pursuant to said Contract.

b. Simultaneous with receipt of each such payment, Lockheed shall deliver to TWA, in the condition and at the place specified in said Contract (except that the fifth Airplane, referred to in paragraph 1 above, shall be delivered to Hughes, and at Las Vegas, Nevada upon proper amendment of said Contract pursuant to Article 3(b) thereof), the Airplane to whose purchase such payment is applicable, and a bill of sale duly vesting in Hughes good title to such Airplane free and clear of all encumbrances and such other appropriate documents of title as Hughes may reasonably require; and such delivery shall discharge the obligation of Lockheed to make delivery pursuant to said Contract.

c. Any representatives heretofore designated, or authorized, or who may hereafter be designated or authorized, by TWA to act or perform functions with [fol. 4403] respect to said Airplanes, including without limitation functions of inspection, delivery of payment and receipt of delivery of Airplanes and bills of sale, execution and receipt of packing sheets, and other related matters, acts, and instruments, are hereby designated and authorized by Hughes to act and perform on its behalf similar functions with respect to said Airplanes.

3. It is further agreed, notwithstanding anything to the contrary in said Contract No. LD-60, as amended, but subject to the conditions stated in paragraph 4 hereof, that:

a. With respect to each of the four Airplanes whose title Hughes acquires for security purposes, all rights and obligations pursuant to said Contract No. LD-60, as amended, whether before or after delivery (except only those relating to payment of final installment of purchase price and delivery of Airplanes and title as in this agreement provided) shall remain rights and obli-

gations solely between TWA and Lockheed, and shall not become rights and obligations between Hughes and Lockheed, all with the same full force and effect as would obtain but for this agreement; provided, however, that in event Hughes should repossess any or all of said four Airplanes pursuant to the conditional sale arrangements between Hughes and TWA, Hughes shall succeed to all the rights and assume all the obligations with respect to the Airplanes repossessed applicable under said Contract LD-60, as amended, and subsisting as of the date of such repossession; and all rights and obligations of Hughes in any event shall be limited and affected by all agreements, covenants, actions, consents, performances, and discharges between TWA and Lockheed with respect to said Airplanes prior to such repossession, whether before or after delivery of said Airplanes; and

b. With respect to the one of said last five Airplanes whose full legal and beneficial ownership is purchased by Hughes, all rights and obligations pursuant to said Contract No. LD-60, as amended subsisting as of the date Hughes acquires such ownership shall become rights and obligations solely between Hughes and Lockheed, and shall cease to be rights and obligations between TWA and Lockheed, provided that all rights and obligations of Hughes in any event shall be limited and affected by all agreements, covenants, actions, consents, performances, discharges between TWA and Lockheed with respect to said one Airplane prior to the date Hughes acquired such ownership.

4. TWA shall have the right to nullify the application of this agreement to any or all of said five Airplanes by written notice to that effect delivered to Lockheed and Hughes at least five days prior to delivery of the Airplane to which such notice relates.

If the foregoing correctly sets forth our understanding and agreement in the premises, kindly so indicate by dating and signing, as indicated, the two duplicates of this letter

enclosed herewith and by returning one such duplicate to [fol. 4404] each of the undersigned.

Very truly yours,

HUGHES TOOL COMPANY

By /s/ T. A. SLACK
Vice President

TRANS WORLD AIRLINES, INC.

By /s/ ERLE M. CONSTABLE
Treasurer

The foregoing correctly sets forth our understanding and agreement in the premises.

Dated: March 21st, 1951

LOCKHEED AIRCRAFT CORPORATION

By CARL B. SQUIER
Vice President

[fol. 4405] Exhibit D

AGREEMENT dated April 5, 1950 between HUGHES TOOL COMPANY, a Delaware corporation (hereinafter called "Hughes"), TRANSCONTINENTAL & WESTERN AIR, INC., a Delaware corporation (hereinafter called "TWA"), and THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, a New York corporation (hereinafter called "Equitable").

WHEREAS Hughes, as of the date hereof, is the owner of approximately 74% of the issued and outstanding capital stock of TWA; and

WHEREAS TWA proposes to borrow from banks not in excess of $10,000,000 to assist it in financing the purchase of 30 Martin 404 Airplanes (hereinafter referred to as the "Airplanes"); and

WHEREAS Equitable, as the owner of all the Debentures issued and outstanding under the Indenture dated as of

December 1, 1945 entered into between TWA and The Commercial National Bank and Trust Company of New York, as Trustee, as from time to time amended (hereinafter referred to as the "Indenture"), deems it desirable that TWA acquire the Airplanes and has, co-incidentally herewith and in reliance hereon, given its consent under Section 4.26 of the Indenture to the waiver of the restrictions contained in the Indenture so as to permit TWA to purchase such Airplanes and to borrow money on the security thereof to assist it in financing such purchase;

NOW, THEREFORE, in consideration of the premises, it is hereby agreed as follows:

1. TWA agrees that on or before December 31, 1951 it will sell sufficient shares of its unissued capital stock so that the net proceeds to it from such sale, after deducting underwriting commissions and other expenses of such issuance payable by it, shall be at least $5,000,000.

2. Hughes agrees that it will cause TWA to perform the agreement contained in paragraph 1 hereof and that if other purchasers are not available, Hughes will, itself, buy on or before December 31, 1951, sufficient shares of the unissued capital stock of TWA to provide net proceeds to TWA from such sale, after deducting underwriting commissions and other expenses of such issuance payable by TWA, of at least $5,000,000, provided, however, that said purchase by Hughes shall be subject to the approval of the Civil Aeronautics Board, but Hughes agrees that it will and it will cause TWA to take such action as may be necessary to obtain such approval if such approval can be obtained.

3. Hughes agrees that if for any reason it is impossible for TWA to perform its obligation under paragraph 1 hereof, upon the request of Equitable, Hughes will lend to TWA said sum of $5,000,000 evidenced by a subordinated note or notes in substantially the same terms and subject to substantially the same conditions as were contained in the Subordinated Convertible 2¾% Notes issued by TWA, pursuant to the Three-Party Agreement dated January 31, 1947 between Hughes, TWA and Equitable, provided, however, that said loan shall be subject to the approval of the

[fol. 4406] Civil Aeronautics Board, but Hughes agrees that it will and it will cause TWA to take such action as may be necessary to obtain such approval if such approval can be obtained. TWA agrees that, upon the request of Equitable, it will borrow at least $5,000,000 upon such terms and conditions if such loan is made available to it. Equitable hereby agrees to waive the restrictions contained in the Indenture so as to permit such borrowing by TWA.

WITNESS the due execution hereof in several counterparts.

HUGHES TOOL COMPANY

By /s/ NOAH DIETRICH
V.P.

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES

By /s/ HENRY GREAVES
Treasurer

TRANSCONTINENTAL & WESTERN AIR, INC.

By /s/ A. V. LESLIE
Vice President and Treasurer

[fol. 4407] Exhibit E

AGREEMENT dated January 16, 1951 between HUGHES TOOL COMPANY, a Delaware corporation (hereinafter called "Hughes"), TRANS WORLD AIRLINES, INC., a Delaware corporation (hereinafter called "TWA") and THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, a New York corporation (hereinafter called "Equitable").

WHEREAS Hughes, as of the date hereof, is the owner of approximately 74% of the issued and outstanding capital stock of TWA; and

WHEREAS TWA proposes to borrow from banks not in excess of Ten Million Dollars ($10,000,000) to assist it in financing the purchase of 10 Lockheed Model 1049 Con-

stellation Airplanes and spare parts for use in connection therewith (hereinafter referred to as the "Airplanes"); and

WHEREAS Equitable, as the owner of all the Debentures issued and outstanding under the Indenture dated as of Dec. 1, 1945, entered into between TWA and The Commercial National Bank and Trust Company of New York, as Trustee, as from time to time amended (hereinafter referred to as the "Indenture"), deems it desirable that TWA acquire the Airplanes and has, co-incidentally herewith and in reliance hereon, given its consent to the execution of a supplemental indenture to the Indenture so as to permit TWA to purchase such Airplanes and to borrow money on the security thereof to assist it in financing such purchase; and

WHEREAS the parties hereto have entered into an agreement dated Apr. 5, 1950, pursuant to which TWA agreed that on or before Dec. 31, 1951, it would sell sufficient shares of its unissued capital stock so that the net proceeds to it from such sale, after deducting underwriting commissions and other expenses of such issuance payable by it, should be at least $5,000,000 (hereinafter referred to as the "1950 Agreement");

NOW, THEREFORE, in consideration of the premises, it is hereby agreed as follows:

1. Without in any way affecting the obligations of TWA and Hughes under the 1950 Agreement, TWA agrees that on or before Dec. 31, 1952, it will sell sufficient shares of its unissued capital stock so that the net proceeds to it from such sale, after deducting underwriting commissions and other expenses of such sales payable by it, shall be at least $5,000,000.

2. Hughes agrees that it will cause TWA to perform the agreement contained in paragraph 1 hereof and that if such shares are not otherwise sold, it will, itself, buy on or before Dec. 31, 1952, sufficient shares of the unissued capital stock of TWA to provide net proceeds to TWA from such sale, after deducting underwriting commissions and other expenses of such issuance payable by TWA,

which together with the net proceeds from any other sales of the unissued capital stock of TWA made subsequent to the date hereof (excluding net proceeds of $5,000,000 from sales made to satisfy the requirements of the 1950 agreement), shall aggregate at least $5,000,000.

[fol. 4408] 3. The parties hereto agree that Hughes may satisfy its obligation hereunder by lending to TWA on or before Dec. 31, 1952, said sum of $5,000,000 (or if the obligation of TWA under paragraph 1 hereof has been performed in part, a sum equivalent to the net proceeds of the shares of stock which Hughes would otherwise be obligated to purchase pursuant to paragraph 2 hereof), evidenced by a subordinated note or notes in substantially the same terms and subject to substantially the same conditions as were contained in the Subordinated Convertible 2¾% Notes issued by TWA, pursuant to the Three-Party Agreement dated Jan. 31, 1947, between Hughes, TWA, and Equitable.

4. All obligations of Hughes herein set forth are subject to any approval of the Civil Aeronautics Board which may be required by law but Hughes and TWA agree to take all reasonable steps to obtain any such required approval.

WITNESS the due execution hereof in several counterparts.

HUGHES TOOL COMPANY

By /s/ NOAH DIETRICH
Executive Vice President

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES

By /s/ F. A. SHAILER

TRANS WORLD AIRLINES, INC.

By /s/ ERLE M. CONSTABLE
Treasurer

[fol. 4411]

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

EXHIBIT B-7 TO AFFIDAVIT OF CHESTER C. DAVIS

[Stamp—Civil Aeronautics Authority—Received—Jan 27, 1944—illegible]

(Letterhead of Chadbourne, Wallace, Parke & Whiteside, New York 4, N. Y.)

January 24, 1944

Frank L. Law, Esq.,
Examiner,
Civil Aeronautics Board,
Department of Commerce Bldg.,
Washington 25, D. C.

Dear Mr. Law:

At your suggestion, I would like to outline the telephone conversation that I had with Mr. Arne Wiprud of the Department of Justice on January 20, relative to the application of Hughes Tool Company in Docket 1182.

Mr. Wiprud called me from Washington and stated that the Department of Justice was unwilling formally to set forth its position as intervener in connection with the application of Hughes Tool Company, as requested at the pre-hearing conference. Mr. Wiprud gave no reason why the Department of Justice was unwilling to do so. However, he stated that there were two points in which the Department is interested:

1. The Department of Justice in the past has been interested in the control of operating companies by manufacturing companies for the reason that such control might result in an increased cost of product to the operating company and thus an increased cost to the public. Mr. Wiprud stated that this control also might possibly lead to a price discrimination in favor of the operating subsidiary.

In response, I pointed out that his statement was directly contrary to the Department of Justice petition in Docket 1182, since the petition (paragraph V) appears to allege that the intervention was based on the fear that the manufacturing company might "subsidize" TWA, while Mr. Wiprud's position now is that the manufacturing company might mulct TWA. Further, I pointed out that the CAB controls the price paid by the public in this case and, therefore, the public interest was fully protected. I also stated that the approval sought by Hughes Tool Company in this case would not constitute a license to permit Hughes [fol. 4412] Tool Company or TWA to do whatever they desire in the future, and that, insofar as price discrimination is concerned, the parties would be subject to the same laws as any other persons. . .

2. As a second point Mr. Wiprud stated that he was interested in the contract relating to the construction of Lockheed Constellation aircraft, to which Hughes Tool Company was a party, and that transactions relating to this contract should be made a part of the record.

I stated that there was no objection to doing this, and that the transaction was one in which TWA had acquired its interest from Hughes Tool Company at cost to Hughes Tool and that the assignment by TWA of its interest to the Government had been at cost.

Mr. Wiprud finally concluded with the statement that the petition of the Department of Justice might be explained on the ground that this was the first case in which control of an airline by a company engaged in the manufacture of aircraft was involved. From this statement and others, I gained the impression that the Department of Justice was not very clear as to its position and apparently desired to sit on the sidelines and see what facts might develop.

Three extra copies of this letter are enclosed for any distribution you may wish to make.

Yours very truly,

/s/ GEORGE A. SPATER

[fol. 4413]

[Stamp—Civil Aeronautics Authority—Received—Mar 9, 1944—office illegible]

DEPARTMENT OF JUSTICE

WASHINGTON 25, D. C.

Address reply to

"The Attorney General"
and refer to
initials and number

A.C.W.

60-228-48

[Handwritten notation—Law B107]

March 8, 1944

Examiner Frank A. Law, Jr.
Civil Aeronautics Board
Washington, D. C.

Re: Acquisition by Hughes Tool Company of Control of Transcontinental & Western Air, Inc., Docket No. 1182.

Dear Sir:

In accordance with the procedure outlined in the pre-hearing conference report and subsequent correspondence in connection with the above matter, this is to advise that the Department of Justice does not plan to call any witnesses at the hearing on March 17, 1944.

Very truly yours,

/s/ WENDELL BERGE
Wendell Berge
Assistant Attorney General

Cc: Louis W. Goodkind, Esq.
George A. Spater, Esq.

[Stamp— Illegible]

[fol. 4414]

[Stamp—Illegible—Apr 10, 1944]

DEPARTMENT OF JUSTICE
WASHINGTON 25, D. C.

Address reply to
"The Attorney General"
and refer to
initials and number

ACW
60-228-48

[Handwritten notation—Law—initials illegible—B107]

April 7, 1944

Examiner Frank A. Law, Jr.
Civil Aeronautics Board
Washington, D. C.

Re: Hughes Tool Company—Control of TWA, CAB Docket No. 1182.

Dear Sir:

At the hearing in the above matter, counsel for the Department of Justice reserved the right to file a brief supplementing the statement made at that time, if such a brief was deemed necessary.

This is to advise you that the Department does not desire to file a brief inasmuch as a brief would be a mere repetition of its position as set forth in the statement made at the hearing.

Very truly yours

/s/ WENDELL BERGE
Wendell Berge
Assistant Attorney General

[fol. 4415]

[Stamp—Illegible—Dec 10 1945 A.M.]

(Letterhead of Chadbourne, Wallace, Parke & Whiteside, New York 4, N. Y.)

[Handwritten notation—To JHW]

December 7, 1945

Re: Hughes Tool Company—Acquisition of Control of TWA, Docket No. 1182

George C. Neal, Esq.,
General Counsel,
Civil Aeronautics Board,
Washington 25, D. C.

Dear Mr. Neal:

In your letter of November 19, relating to our communication of November 14, 1945 requesting certain modifications of the Board's final order in the above entitled case, you have asked to be advised briefly of all aeronautical activities, including manufacturing and development, which Hughes Tool Company is presently undertaking.

We have communicated with Mr. Noah Dietrich, Executive Vice President of the company, who has advised us that in addition to its control of TWA, it is engaged in the following aeronautical activities:

1. It is in the process of completing the 440,000 pound gross weight 8-motored flying boat under contract with the Defense Plant Corporation.

2. The aircraft department of Hughes Tool Company is also in the completion stages of the Army Air Forces F-11 contract for the manufacture of 3 long range bi-motored reconnaissance planes, consisting of a static test model and 2 flying ships. Delivery of these completed aircraft should be made early in 1946.

3. Hughes Tool Company is carrying on several secret experimental projects under contract with the Army Air Forces.

4. As an incidental operation the aircraft department of Hughes Tool Company is manufacturing a limited number of 7-foot plywood rowboats for the purpose of using excess material and utilizing available personnel.

[fol. 4416] 5. Hughes Tool Company at the present time owns 2 Douglas B-23's, 1 Sikorsky amphibian, 1 Boeing 307 and 1 single motored Waco. The Boeing and Sikorsky are being offered for sale. It is anticipated that services to be provided by TWA of the type described in our letter of November 14 will be furnished to the 2 Douglas B-23's which are used in the company's business.

Yours very truly,

CHADBOURNE, WALLACE, PARKE & WHITESIDE

[fol. 4417]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

CIVIL AERONAUTICS BOARD

WASHINGTON 25

October 27, 1948

Mr. Warren Lee Pierson
Chairman of the Board of Directors
Transcontinental & Western Air, Inc.
630 Fifth Avenue
New York 20, New York

Dear Mr. Pierson:

Re: Motion for Approval of Purchase of Two Constellation Airplanes from Hughes Tool Company by Transcontinental & Western Air, Inc. —Docket No. 1182

This letter is with reference to a motion filed by Transcontinental & Western Air, Inc., on October 22, 1948, with respect to the latter's purchase of two Constellation air-

planes from Hughes Tool Company at a total price not to exceed $1,090,000, for which Board approval is requested.

You will appreciate, I am sure, that certain problems are raised by the filing of your motion in this matter. As you know, the Board, in its order of October 17, 1944, approving Hughes Tool Company's control of Transcontinental & Western Air, Inc., under section 408 of the Civil Aeronautics Act of 1938, as amended, conditioned such approval, in part, as follows:

> "That said approval shall be effective so long as commercial transactions between TWA and Hughes Tool Company . . . . are limited to transactions involving complete items of property, the price of which does not exceed $200 each, with the further limitation that the total annual expenditure involved in such commercial transactions by either party shall not exceed $10,000; . . ."

In the light of the above, it is not felt that action can be taken on this motion without first obtaining additional information, such as the full history of the airplanes, including copies of the original bills of sale to Hughes Tool Company, a breakdown of the cost elements of each airplane, including the cost of each item of conversion, the amount of depreciation accrued on each airplane, an appraisal of the planes at cost or market value, whichever is lower, by an impartial third party, a statement of the use made of the planes from the date they were purchased to the present date, including total number of flying hours, the total number of hours of use of each engine. It is assumed, of course, that Transcontinental & Western Air, Inc., has secured all necessary consents and approvals to the proposed purchase required under or by reason of any prior commitments made by the carrier.

[fol. 4418] Accordingly, in the interest of expeditious handling of this matter, it is suggested that the information requested above be submitted as soon as possible, together with such other data and material in support of the

motion as Transcontinental & Western Air, Inc., shall deem proper in the premises.

Very truly yours,

/s/ James L. Highsaw, Jr.
James L. Highsaw, Jr.
Chief, Carrier Relationships Section

GJB:DM

CC:
Chadbourne, Wallace, Parke & Whiteside

Mr. Stodola	B-102
Mr. Highsaw	B-38
Mr. Batavia	B-38
Dockets Section	B-110
Mail & Files	B-24
Mr. Fleming	

[fol. 4419]

[Stamp—Civil Aeronautics Board—Received—Apr 2 1959 —Carrier Relations Div.]

(Letterhead of Chadbourne, Parke, Whiteside & Wolff, New York 4, N. Y.)

March 30, 1959

Mr. J. W. Rosenthal
Bureau of Air Operations
Civil Aeronautics Board
Washington 25, D. C.

Dear Mr. Rosenthal:

Enclosed for your information is a copy of an Agreement of Lease entered into on March 30, 1959 by Hughes Tool Company and TWA, covering the lease by TWA from Hughes Tool Company on a day-to-day basis of Boeing Model 707-131 aircraft, FAA No. N733TW.

This lease covers the third Boeing 707-131 leased by Hughes to TWA and the second such aircraft covered by TWA's Motion of March 13, 1959 in Docket No. 1182. As indicated in the Motion this lease was entered into subject to the approval of the Civil Aeronautics Board.

The enclosed lease is in form identical to the lease covering aircraft FAA No. N732TW, a copy of which was forwarded to you by Mr. Rowe on March 19, 1959.

Very truly yours,

/s/ HAROLD L. WARNER, JR.

Enclosure

[Stamp—Received—Civil Aeronautics Board—Apr 2 8 39 AM '59—Office of Director—Bur. of Air Operations]

[fol. 4420]

[Stamp—Civil Aeronautics Board—Received—Apr 8 1959 —Carrier Relations Div.]

(Letterhead of Chadbourne, Parke, Whiteside & Wolff, New York 4, N. Y.)

April 6, 1959

Mr. J. W. Rosenthal
Bureau of Air Operations
Civil Aeronautics Board
Washington 25, D. C.

Dear Mr. Rosenthal:

Enclosed for your information is a copy of an Agreement of Lease entered into on March 30, 1959 by Hughes Tool Company and TWA, covering the lease by TWA from Hughes Tool Company on a day-to-day basis of Boeing Model 707-131 aircraft, FAA No. N734TW.

This lease covers the fourth Boeing 707-131 leased by Hughes to TWA and the third such aircraft covered by TWA's Motion of March 13, 1959 in Docket No. 1182. As indicated in the Motion this lease was entered into subject to the approval of the Civil Aeronautics Board. The lease of this aircraft commenced on April 3, 1959, when the aircraft was delivered to TWA.

The enclosed lease is in form identical to the lease covering aircraft FAA No. N732TW, a copy of which was forwarded to you on March 19, 1959.

Very truly yours,

/s/ CARL S. ROWE

Enclosure

[fol. 4421]

[Stamp—Received—Civil Aeronautics Board—Apr 23 1 59 PM '59—Office of Director—Bur. of Air Operations]

[Stamp—Civil Aeronautics Board—Received Apr 23 1959 —Carrier Relations Div.]

(Letterhead of Chadbourne, Parke, Whiteside & Wolff, New York 4, N. Y.)

April 22, 1959

Mr. J. W. Rosenthal
Bureau of Air Operations
Civil Aeronautics Board
Washington 25, D. C.

Dear Mr. Rosenthal:

Enclosed for your information is a copy of an Agreement of Lease entered into on April 18, 1959 by Hughes Tool Company and TWA covering the lease by TWA from Hughes Tool Company on a day-to-day basis of Boeing Model 707-131 aircraft, FAA No. N735TW.

This lease covers the fifth Boeing 707-131 leased by Hughes to TWA and the fourth such aircraft covered by TWA's Motion of March 13, 1959 in Docket No. 1182. As indicated in the Motion this lease was entered into subject to the approval of the Civil Aeronautics Board. The lease of this aircraft commenced on April 18, 1959, when the aircraft was delivered to TWA.

The enclosed lease is in form identical to the lease covering aircraft FAA No. N732TW, a copy of which was forwarded to you on March 19, 1959.

Very truly yours,

/s/ Carl S. Rowe

Enclosure

[fol. 4422]

[Stamp—Civil Aeronautics Board—Received—May 6 1959 —Carrier Relations Div.]

(Letterhead of Chadbourne, Parke, Whiteside & Wolff, New York 4, N. Y.)

May 4, 1959

Mr. J. W. Rosenthal
Bureau of Air Operations
Civil Aeronautics Board
Washington 25, D. C.

Dear Mr. Rosenthal:

Enclosed for your information is a copy of an Agreement of Lease entered into on April 29, 1959 by Hughes Tool Company and TWA covering the lease by TWA from Hughes Tool Company on a day-to-day basis of Boeing Model 707-131 aircraft, FAA No. N736TW.

This lease covers the sixth Boeing 707-131 leased by Hughes to TWA and the fifth such aircraft covered by TWA's Motion of March 13, 1959 in Docket No. 1182. As indicated in the Motion this lease was entered into subject to the approval of the Civil Aeronautics Board. The lease of this aircraft commenced on April 29, 1959, when the aircraft was delivered to TWA.

The enclosed lease is in form identical to the lease covering aircraft FAA No. N732TW, a copy of which was forwarded to you on March 19, 1959.

Very truly yours,

/s/ Carl S. Rowe

Enclosure

[Stamp—Received—Civil Aeronautics Board May 5 11 41 AM '59—Office of Director—Bur. of Air Operations]

[fol. 4423]

[Stamp—Received—Docket Section—May 20 9 54 AM '59 —Civil Aeronautics Board]

(Letterhead of Chadbourne, Parke, Whiteside & Wolff, New York 4, N. Y.)

May 18, 1959

Civil Aeronautics Board
Washington 25, D. C.

Re: Motion dated March 13, 1959 of Trans World Airlines, Inc. for approval of Transactions with Hughes Tool Company, Docket No. 1182

Gentlemen:

Pursuant to Order Serial No. E 13873 issued May 15, 1959, enclosed for filing on behalf of TWA in the above matter are a copy of agreement of lease entered into as of May 10, 1959 and copy of agreement of lease entered into as of May 13, 1959 by Hughes Tool Company and TWA covering the lease by TWA from Hughes Tool Company on a day-to-day basis of Boeing Model 707-131 aircraft, FAA No. N737TW and N738TW respectively.

These leases cover the seventh and eighth Boeing 707-131 leased by Hughes to TWA and the sixth and seventh such aircraft covered by TWA's Motion of March 13, 1959 in the above docket. As indicated in the Motion these leases were entered into subject to the approval of the Civil Aeronautics Board. The lease of aircraft FAA No. N737TW commenced on May 10, 1959 and the lease of aircraft FAA No. N738TW commenced on May 13, 1959, the respective dates the aircraft were delivered to TWA.

The enclosed leases are in form identical to the five preceding leases filed by TWA in connection with its Motion of March 13, 1959 in the above matter.

Very truly yours,

/s/ Harold L. Warner, Jr.

Enclosures

[fol. 4424] [Handwritten notation—2—B-110]

[Stamp—Received—Docket Section—May 27 12 12 PM '59 —Civil Aeronautics Board]

(Letterhead of Chadbourne, Parke, Whiteside & Wolff, New York 4, N. Y.)

May 26, 1959

Civil Aeronautics Board
Washington 25, D. C.

Re: Motion dated March 13, 1959 of Trans World Airlines, Inc. for approval of Transactions with Hughes Tool Company, Docket No. 1182

Gentlemen:

Pursuant to Order Serial No. E 13873 issued May 15, 1959, enclosed for filing on behalf of TWA in the above matter is a copy of agreement of lease entered into as of May 24, 1959 by Hughes Tool Company and TWA covering the lease by TWA from Hughes Tool Company on a day-to-day basis of Boeing Model 707-131 aircraft, FAA No. N740TW.

This lease covers the ninth Boeing 707-131 leased by Hughes to TWA and the eighth such aircraft covered by TWA's Motion of March 13, 1959 in the above docket. The lease commenced on May 24, 1959, the date the aircraft was delivered to TWA.

The enclosed lease is in form identical to the preceding leases filed by TWA in connection with its Motion of March 13, 1959 in the above matter.

Very truly yours,

/s/ Harold L. Warner, Jr.

Enclosures

[Stamp—Civil Aeronautics Board—Received—Jun 1 1959 —Carrier Relations Div.]

[fol. 4425]

[Handwritten notation—1 copy only—2—B-110]

[Stamp—Received—Docket Section—Jun 4 11 25 AM '59 —Civil Aeronautics Board]

(Letterhead of Chadbourne, Parke, Whiteside & Wolff, New York 4, N. Y.)

June 3, 1959

Civil Aeronautics Board
Washington 25, D. C.

Re: Motion dated March 13, 1959 of Trans World Airlines, Inc. for approval of Transactions with Hughes Tool Company, Docket No. 1182

Gentlemen:

Pursuant to Order Serial No. E 13873 issued May 15, 1959, enclosed for filing on behalf of TWA in the above matter is a copy of agreement of lease entered into as of May 28, 1959 by Hughes Tool Company and TWA covering the lease by TWA from Hughes Tool Company on a day-to-day basis of Boeing Model 707-131 aireraft, FAA No. N739TW.

This lease covers the tenth Boeing 707-131 leased by Hughes to TWA and the ninth such aircraft covered by TWA's Motion of March 13, 1959 in the above docket. The lease commenced on May 28, 1959, the date the aircraft was delivered to TWA.

The enclosed lease is in form identical to the preceding leases filed by TWA in connection with its Motion of March 13, 1959 in the above matter.

Very truly yours,

/s/ Harold L. Warner, Jr.

Enclosures

[fol. 4426]

[Stamp—illegible—Jun 19 '59]

[Handwritten notation—Orig. only rec'd]

(Letterhead of Chadbourne, Parke, Whiteside & Wolff, New York 4, N. Y.)

1182

June 18, 1959

Civil Aeronautics Board
Washington 25, D. C.

Re: Motion dated March 13, 1959 of Trans World Airlines, Inc. for approval of Transactions with Hughes Tool Company, Docket No. 1182

Gentlemen:

Pursuant to Order Serial No. E 13873 issued May 15, 1959, enclosed for filing on behalf of TWA in the above matter is a copy of agreement of lease entered into as of June 13, 1959 by Hughes Tool Company and TWA covering the lease by TWA from Hughes Tool Company on a day-to-day basis of Boeing Model 707-131 aircraft, FAA No. N741TW.

This lease covers the eleventh Boeing 707-131 leased by Hughes to TWA and the tenth such aircraft covered by TWA's Motion of March 13, 1959 in the above docket. The lease commenced on June 13, 1959, the date the aircraft was delivered to TWA.

The enclosed lease is in form identical to the preceding leases filed by TWA in connection with its Motion of March 13, 1959 in the above matter.

Very truly yours,

/s/ Harold L. Warner, Jr.

Enclosure

[fol. 4427]

[Stamp—illegible]

[Handwritten notation—Orig. only rec'd]

(Letterhead of Chadbourne, Parke, Whiteside & Wolff, New York 4, N. Y.)

July 6, 1959

Civil Aeronautics Board
Washington 25, D. C.

Re: Motions dated March 13 and June 26, 1959 of Trans World Airlines, Inc. for approval of Transactions with Hughes Tool Company, Docket No. 1182

Gentlemen:

Pursuant to Order Serial No. E 13873 issued May 15, 1959 and Order Serial No. E 14169 issued July 1, 1959, enclosed for filing on behalf of TWA in the above matter is a copy of agreement of lease entered into as of July 1, 1959 by Hughes Tool Company and TWA covering the lease by TWA from Hughes Tool Company on a day-to-day basis of Boeing Model 707-131 aircraft, FAA No. N742TW.

This lease covers the twelfth Boeing 707-131 leased by Hughes to TWA and the eleventh such aircraft covered by TWA's Motion of March 13, 1959 in the above docket. The lease commenced on July 1, 1959, the date the aircraft was delivered to TWA.

The enclosed lease is in form identical to the preceding leases filed by TWA in connection with its Motion of March 13, 1959 in the above matter.

Very truly yours,

/s/ Harold L. Warner, Jr.

Enclosure

[Stamp—Civil Aeronautics Board—Received—Jul 8 1959—Carrier Relations Div.]

[fol. 4428]

[Handwritten notation—One copy only]

[Stamp—Jul 20 AM '59]

[Stamp—Civil Aeronautics Board—Received—Jul 21 1959 —Carrier Relations Div.]

(Letterhead of Chadbourne, Parke, Whiteside & Wolff, New York 4, N. Y.)

July 17, 1959

Civil Aeronautics Board
Washington 25, D. C.

Re: Motions dated March 13 and June 26, 1959 of Trans World Airlines, Inc. for approval of Transactions with Hughes Tool Company, Docket No. 1182

Gentlemen:

Pursuant to Order Serial No. E 13873 issued May 15, 1959 and Order Serial No. E 14169 issued July 1, 1959, enclosed for filing on behalf of TWA in the above matter is a copy of agreement of lease entered into as of July 10, by Hughes Tool Company and TWA covering the lease by TWA from Hughes Tool Company on a day-to-day basis of Boeing Model 707-131 aircraft, FAA No. N743TW.

This lease covers the thirteenth Boeing 707-131 leased by Hughes to TWA and the first such aircraft covered by TWA's Motion of June 26, 1959 in the above docket. The lease commenced on July 10, 1959, the date the aircraft was delivered to TWA.

The enclosed lease is in form identical to the preceding leases filed by TWA in connection with its Motion of March 13, 1959 in the above matter.

Very truly yours,

/s/ Harold L. Warner, Jr.

Enclosure

[fol. 4429]

[Handwritten notation—One copy only—B-110]

[Stamp—Civil Aeronautics Board—Received—Jul 21 1959 —Carrier Relations Div.]

[Stamp—Illegible]

(Letterhead of Chadbourne, Parke, Whiteside & Wolff, New York 4, N. Y.)

July 17, 1959

Civil Aeronautics Board
Washington 25, D. C.

Re: Motions dated March 13 and June 26, 1959 of Trans World Airlines, Inc. for approval of Transactions with Hughes Tool Company, Docket No. 1182

Gentlemen:

Pursuant to Order Serial No. E 13873 issued May 15, 1959 and Order Serial No. E 14169 issued July 1, 1959, enclosed for filing on behalf of TWA in the above matter is a copy of agreement of lease entered into as of July 14, 1959 by Hughes Tool Company and TWA covering the lease by TWA from Hughes Tool Company on a day-to-day basis of Boeing Model 707-131 aircraft, FAA No. N744TW.

This lease covers the fourteenth Boeing 707-131 leased by Hughes to TWA and the second such aircraft covered by TWA's Motion of June 26, 1959 in the above docket. The lease commenced on July 14, 1959, the date the aircraft was delivered to TWA.

The enclosed lease is in form identical to the preceding leases filed by TWA in connection with its Motion of March 13, 1959 in the above matter.

Very truly yours,

/s/ Harold L. Warner, Jr.

Enclosure

[fol. 4430]

[Handwritten notation—Joe]

(Letterhead of Chadbourne, Parke, Whiteside & Wolff, New York 4, N. Y.)

August 7, 1959

Civil Aeronautics Board
Washington 25,
D. C.

Re: Motions dated March 13 and June 26, 1959 of Trans World Airlines, Inc. for approval of Transactions with Hughes Tool Company, Docket No. 1182

Gentlemen:

Pursuant to Order Serial No. E 13873 issued May 15, 1959 and Order Serial No. E 14169 issued July 1, 1959, enclosed for filing on behalf of TWA in the above matter is a copy of agreement of lease entered into as of August 1, 1959 by Hughes Tool Company on a day-to-day basis of Boeing Model 707-131 aircraft, FAA No. N745TW.

This lease covers the 15th Boeing 707-131 leased by Hughes to TWA and the third such aircraft covered by TWA's motion of June 26, 1959 in the above Docket. The lease commenced on August 1, 1959, the date the aircraft was delivered to TWA.

The enclosed lease is in form identical to the preceding leases filed by TWA in connection with its Motion of March 13, 1959 in the above matter.

Very truly yours,

/s/ Carl S. Rowe

Enclosure

[Stamp—Civil Aeronautics Board—Received—Aug 10 1959 —Carrier Relations Div.]

[fol. 4431]

[Stamp—Illegible]

[Stamp—Civil Aeronautics Board—Received—Mar 23 1959 —Carrier Relations Div.]

(Letterhead of Chadbourne, Parke, Whiteside & Wolff, New York 4, N. Y.)

1182

Mr. J. W. Rosenthal
Bureau of Air Operations
Civil Aeronautics Board
Washington 25, D. C.

Dear Mr. Rosenthal:

Enclosed for your information is a copy of an Agreement of Lease entered into on March 17, 1959 by Hughes Tool Company and TWA, covering the lease by TWA from Hughes Tool Company on a day-to-day basis of Boeing Model 707-131 aircraft, FAA No. N732TW. This covers the second Boeing 707-131 leased by Hughes to TWA and the first such aircraft covered by TWA's Motion of March 13, 1959 in Docket No. 1182. As indicated in the Motion, this lease was entered into subject to the approval of the Civil Aeronautics Board.

Except for changes in the plane and engine numbers, the addition of a clause at the end of the second sentence of paragraph 2 and the addition of a sentence at the end of paragraph 11, the enclosed lease is in the same form as the lease executed in connection with TWA's Motion of January 29, 1959, in Docket No. 1182, which was approved by the Board's Order Serial No. 13542 of February 26, 1959.

Very truly yours,

/s/ Carl S. Rowe

Enclosure

[fol. 4432]

[Stamp—Civil Aeronautics Board—Received—Mar 23 1959—Carrier Relations Div.]

THIS AGREEMENT entered into as of the 17th day of March 1959 by and between Hughes Tool Company, a Delaware corporation ("Lessor") and Trans World Airlines, Inc., a Delaware corporation ("Lessee"):

WITNESSETH:

1.

Lessor hereby agrees to lease to Lessee and Lessee hereby agrees to hire and take from Lessor, subject to the terms and conditions herein provided, one Boeing Model 707-131 aircraft bearing FAA No. N732TW (Manufacturer's serial No. 17659), including four Pratt and Whitney JT3C-6 Engines (Serial Nos. SNP629074B, SNP628855B, SNP628852B, and SNP628844B), herein sometimes referred to as "the Aircraft."

2.

The lease of the Aircraft shall commence on delivery of the Aircraft to Lessee and shall continue from day-to-day until terminated by either of the parties. The lease shall terminate upon twenty-four hour written notice to such effect from one party to the other and shall in any event terminate no later than June 30, 1959. The Aircraft shall be delivered to Lessee hereunder at Kansas City, Missouri, or such other place as may be mutually agreed.

3.

(a) Lessee agrees to accept the Aircraft in its present condition and Lessor makes no warranties or representations whatsoever as to condition of the Aircraft, and none shall be implied in law.

[fol. 4433] Such warranties and guarantees from manufacturers and suppliers of the Aircraft and its equipment

as can be effectively assigned for the term of this lease are hereby assigned by Lessor to Lessee for the term of this lease to the extent of Lessee's interest accruing during the term of such lease.

(b) Upon the termination of this lease, Lessee agrees to return the Aircraft to Lessor (at Mid-Continent International Airport, Kansas City, Missouri, or such other place as may be mutually agreed) in the same condition and equipped with the same equipment as it was at the commencement of the lease, except for reasonable wear and tear from ordinary use.

4.

During the term of the lease Lessee may at its own expense remove from the Aircraft such items of equipment, and may install on the Aircraft such additional items of equipment, as Lessee may consider reasonably necessary to fit such Aircraft for use by Lessee; provided, however, that no such removal or installation which shall cause permanent change in the structure of the Aircraft shall be made without the prior written consent of Lessor unless such removal or installation is made pursuant to a mandatory FAA requirement. Such items as shall be so removed may be either retained in the custody of Lessee, or returned to Lessor, but in either event they shall be reinstalled on the Aircraft prior to the return of the Aircraft to Lessor. Items of non-mandatory nature that shall have been installed in the Aircraft shall be removed prior to the return of the Aircraft to Lessor.

[fol. 4434]

5.

Lessee shall perform all necessary maintenance, overhaul and servicing on the Aircraft during the term of the lease in accordance with the requirements of the Federal Aviation Agency.

6.

If, during the term of the lease of Aircraft pursuant to this agreement, the Federal Aviation Agency or any other governmental agency having jurisdiction shall make mandatory the installation, removal or modification (other than mere inspection) of items on the Aircraft, then compliance shall be effected promptly at Lessor's expense.

7.

Lessee shall be liable for any loss of, or damage to, any Aircraft while leased from Lessor hereunder. During all times that the Aircraft is leased hereunder, Lessee shall, at its own cost and expense, keep the Aircraft, insured against loss or damage from crash, fire, wind storm, collision, strike, riots, insurrection, civil commotion or other accident or casualty (except war risk and engine ingestion) with Lessor named as a co-insured and shall furnish Lessor with a certificate of insurance therefor. The amount of such insurance shall not be less than $4,700,000 per Aircraft, with flight deductible and ground deductible clauses substantially equivalent to those currently in force in Lessee's other insurance policies. In the event of damage to the Aircraft, during the term of the lease, from a risk [fol. 4435] required to be covered by such insurance, Lessee will repair the damage at its own expense. Upon complying with the foregoing provision, Lessee shall be entitled to retain (or, in the case of receipt by Lessor, to receive from Lessor) all proceeds of insurance with respect to such damage. In the event the Aircraft is lost, destroyed or damaged beyond repair, Lessee will pay to Lessor, as their interests may appear, for such Aircraft the sum of $4,700,000 (U. S. currency), less any amounts that might have been paid to and retained by Lessor as proceeds from the insurance, which shall constitute payment for all right, title and interest of Lessor in the Aircraft which shall thereupon pass to Lessee. The policies providing the insurance required by this agreement shall include customary provisions that Lessor shall not be responsible for the

representations and warranties of Lessee and that Lessor shall receive notice prior to cancellation or expiration (unless the policy is being renewed) of any policy.

8.

Lessee agrees to defend, indemnify and hold harmless Lessor from and against all losses, including cost and expenses by reason of claims for injury or death of persons and loss or damage to property arising out of or in any manner connected with possession, use or operation by Lessee of the Aircraft leased hereunder during the term of such lease. During such term the Lessee shall keep in force and effect liability insurance in the amounts recommended by Lessee's Senior Vice-President—Finance.

[fol. 4436]

9.

Lessee agrees that no Aircraft leased pursuant hereto will be used during the term of the lease in any manner which shall violate any law or regulation of any government or governmental agency having jurisdiction and that any fine, penalty or forfeiture resulting from any such violation shall be the sole responsibility of Lessee.

10.

(a) As rent for the Aircraft leased hereunder Lessee shall pay to Lessor the sum of $2,500.00 for each full day during the term of the lease. The rental shall be paid on the last day of each month.

(b) Lessee shall also pay to Lessor in respect of each of the engines on the Aircraft $31.00 per hour for each hour since the last overhaul on such engine at the time returned to Lessor on the termination of the lease less the number of hours since manufacture or overhaul on such engine on the delivery of the Aircraft to Lessee.

If the hours since last overhaul on any engine at the time it is returned to Lessor on termination of the lease are less than the number of hours since manufacture or overhaul on such engine on delivery of the Aircraft to

Lessee, Lessor shall pay to Lessee $31.00 for each hour of difference between the two figures.

Settlement under this subparagraph (b) shall be made within 15 days after the end of the term of the lease.

11.

Lessee shall have no right to consent to any lien or liens [fol. 4437] on the Aircraft. Any liens incurred by Lessee shall be discharged at the cost and expense of Lessee, who shall indemnify and save Lessor harmless against any such lien or liens. Lessee shall pay all operating taxes and licenses applicable to the Aircraft or the operation thereof, and also shall pay all property taxes assessed against Lessee or Lessor with respect to the Aircraft by any state, county, or other political subdivision to which Lessor would not ordinarily pay property taxes, except for the use of the Aircraft by Lessee hereunder. Lessee also shall pay any and all state, federal, county and local sales and use taxes assessed against either Lessee or Lessor resulting from the lease or use hereunder of the Aircraft.

The title of Lessor (whether as trustee or otherwise), to the Aircraft and any right of Lessor (whether as trustee or otherwise) to take possession of the Aircraft in compliance with the provisions of this lease shall not be affected by the provisions of Chapter X of the Federal Bankruptcy Act as amended from time to time.

12.

Notwithstanding any of the above provisions it is further agreed that

(a) This lease agreement is entered into subject to approval of the Civil Aeronautics Board and until an order has been entered by the Civil Aeronautics Board permitting the transaction covered by this agreement no rental shall be paid hereunder;

(b) This lease is subject to the necessary consents of the holders of obligations issued by Trans World

Airlines, Inc. under its outstanding indentures, chat-
[fol. 4438] tel mortgages and loan agreements. In the absence of such consents no rental shall be paid hereunder.

IN WITNESS WHEREOF, each of the parties hereto has caused this agreement to be executed in its name and in its behalf by its officer or agent thereunto duly authorized.

TRANS WORLD AIRLINES, INC.

By /s/ A. V. Leslie
Senior Vice President—Finance

HUGHES TOOL COMPANY

By /s/ Raymond M. Holliday
Vice President

[fol. 4439]

Annual Supplement

1182

Report of Transactions between Trans World Airlines, Inc. and Hughes Tool Company, its subsidiaries and affiliates, for the year ended December 31, 1957, pursuant to Order No. 3210, as amended, in Docket No. 1182

Number of Transactions	Nature of Commodity	Price of Item Maximum	Price of Item Minimum	Total Amount (Thousands)
Sales by TWA				
6	Food Service			$ 163
2	Landing Fees	$39.90 ea.	$25.00 ea.	65
3	Maintenance, including parts and labor	7.50 ea.	1.70 ea.	2,340
2	Oil	1.23 gal.	1.21 gal.	13
	Total Sales by TWA			$2,581
Purchases by TWA				
4	HR 10252 Silicon Junction—Diodes	$ 3.74 ea.	$ 2.88 ea.	$ 560
	Total Purchases by TWA			$ 560

Note: During 1957, TWA made borrowings from and repayments to Hughes Tool Company under credit agreements approved by the Board in Orders Nos. E-10871 and E-11432 and received aircraft and made payments pursuant to purchase agreements resulting from the exercise of options approved by Order No. E-10300. Hughes Tool Company purchased from TWA common stock of the Company pursuant to approval granted in Order No. E-11432.

[fol. 4440]

[Stamp—Received—Apr 18 1960—Office of Carrier Accounts and Statistics—CAB]

1182

TWA

TRANS WORLD AIRLINES, INC.
380 Madison Avenue
New York 17, New York, U.S.A.

April 15, 1960

Mr. Warner H. Hord
Chief, Office of Carrier Accounts & Statistics
Civil Aeronautics Board
Washington 25, D. C.

Dear Mr. Hord:

Enclosed is Report of Transactions between Trans World Airlines, Inc. and Hughes Tool Company, its subsidiaries and affiliates, for the year ended December 31, 1959, pursuant to Order No. 3210, as amended, in Docket No. 1182.

Very truly yours,

/s/ B. H. TUMEY
B. H. Tumey
Controller

Enclosure

[Handwritten notation—Photocopy given to Audit 4/2/60]

[fol. 4441]

Report of Transactions between Trans World Airlines, Inc. and Hughes Tool Company, its subsidiaries and affiliates, for the year ended December 31, 1959, pursuant to Order No. 3210, as amended, in Docket No. 1182.

During 1959, TWA engaged in transactions with Hughes Tool Company described in and approved by Orders Nos. E-13334, E-13542, E-13873, E-14169, and E-14504.

In addition, in connection with the destruction of one 1049H aircraft subleased by TWA from Hughes Tool Company (which sublease was approved by Order No. E-13334) TWA, pursuant to the provisions of the sublease, paid the agreed value of this aircraft to Hughes Tool Company for the benefit of the owner of the aircraft and certain of its creditors, such amount being covered by insurance except for a $55,000 insurance deductible.

TWA also repaid to Hughes Tool Company its $12,000,000 note, guaranteed by Hughes Tool Company as approved by Order No. E-13334, and issued to Irving Trust Company, as Agent under a Loan Agreement with TWA dated as of December 27, 1957, which note was subsequently acquired by Hughes Tool Company. This note carried interest at the rate of 5¼% per annum.

In connection with the purchase by Hughes Tool Company of transportation from TWA at regular published rates (approved by Order No. 4437), and in accordance with TWA's tariff rule providing that ticketing machines issued to customers will be provided at the customer's expense, TWA was reimbursed by Hughes Tool Company for payments in the amount of $3,099 paid by TWA to Pacific Telephone and Telegraph Company for installation and servicing of teletype ticketing receivers issued to Hughes Tool Company.

[fol. 4442]

[Stamp—Received—Docket Section—Apr 28 4 00 PM '61—Civil Aeronautics Board]

[Stamp—Received—Apr 27 1961—Office of Carrier Accounts and Statistics—CAB]

1182

TWA

TRANS WORLD AIRLINES, INC.

380 Madison Avenue

New York 17, New York, U.S.A.

April 24, 1961

Mr. Warner H. Hord
Chief, Office of Carrier
Accounts and Statistics
Civil Aeronautics Board
Washington 25, D. C.

Dear Mr. Hord:

Enclosed is Trans World Airlines, Inc. report of transactions with Hughes Tool Company, its subsidiaries and affiliates, for the year 1960 as approved in Order No. 3210, as amended in Docket No. 1182.

Sincerely yours,

/s/ B. H. TUMEY
B. H. Tumey
Controller

Enclosure

[Handwritten notation—Copy given to Audit 4/28/61]

[fol. 4443]

Report of Transactions between Trans World Airlines, Inc. and Hughes Tool Company, its subsidiaries and affiliates, for the year ended December 31, 1960, pursuant to Order No. 3210, as amended, in Docket No. 1182.

During 1960, TWA engaged in transactions with Hughes Tool Company described in and approved by Orders Nos. E-13334, E-13542, E-13873, E-14169, E-14504, E-14877, E-16195, E-15430 and E-15561.

In connection with the purchase by Hughes Tool Company of transportation from TWA at regular published rates (approved by Order No. 4437), and in accordance with TWA's tariff rule providing that ticketing machines issued to customers will be provided at the customer's expense, TWA was reimbursed by Hughes Tool Company for payments in the amount of $2,803 paid by TWA to Pacific Telephone and Telegraph Company for servicing of teletype receivers issued to Hughes Tool Company.

[fol. 4444] [Handwritten notation—Original]

[Stamp—Docket Section—Proceedings Division—Received Dec. 21, 3 PM, '43.—Economic Bureau—Civil Aeronautics Board]

BEFORE THE
CIVIL AERONAUTICS BOARD
Docket No. 1182

In the Matter of Application of

HUGHES TOOL COMPANY

For approval by the Civil Aeronautics Board, if such approval is deemed necessary, of control of Transcontinental & Western Air Inc., an air carrier, under Section 408 of the Civil Aeronautics Act of 1938.

PETITION OF THE DEPARTMENT OF JUSTICE FOR LEAVE TO INTERVENE

TO THE HONORABLE
THE CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Comes now your petitioner, the Department of Justice, and respectfully represents that it has a substantial interest in the above-entitled proceeding and desires to intervene in and become a party thereto, and for grounds of the proposed intervention states:

I

That the Department of Justice is the governmental agency upon which rests the duty and responsibility for the enforcement of the antitrust laws.

II

That the federal antitrust laws are applicable to carriers for hire engaged in interstate or foreign commerce; and that your petitioner is concerned with the issues of restraint of competition and monopoly of transportation in such commerce, arising through the control of one form of transportation by another, or otherwise, which issues are of substantial public interest.

III

That the applicant in the above entitled proceeding seeks approval by the Civil Aeronautics Board, if such approval is deemed necessary, of control of Transcontinental & Western Air, Inc., and that if such approval is not deemed necessary, the Board enter an order to that effect.

[fol. 4445]

IV

That applicant alleges, among other things, that all its stock is owned by Howard R. Hughes; that, on July 31, 1943, it owned 440,050 shares, or 45.6 percent of the total outstanding capital stock of Transcontinental & Western Air, Inc.; that Transcontinental & Western Air, Inc. is an air carrier under the Civil Aeronautics Act; and that said Transcontinental & Western Air, Inc. holds certificates of convenience and necessity for the transportation of persons, property and mail for Routes 2, 36, 37, 44, 58 and 61; that applicant is engaged in the development and manufacture of aircraft through a department operated under the name of Hughes Aircraft Company; and that this department is engaged in such work entirely for the government or for war purposes.

V

That the effect of subsidies of air transport by manufacturing concerns, in this instance by Hughes Tool Company, upon independent air lines is not shown. For this reason, among others, the issue is raised in this proceeding whether competition of independent air lines will be unduly restrained by the consummation of the transaction for which approval is sought in this proceeding.

VI

That because of their property interests private parties to the proceeding are not primarily concerned with the substantial public issues involved; that the Department of Justice is the only governmental agency charged with the duty of investigating complaints with respect to restraints and monopolies and to present evidence thereon; and that participation by the Department of Justice in this proceeding is in furtherance of the anti-monopoly policy of Congress as expressed in the Civil Aeronautics Act of 1938, as amended, which the Board administers, and the federal antitrust laws which the Department of Justice must enforce.

[fol. 4446] WHEREFORE, your petitioner prays leave to intervene and be treated as a party hereto with the right to have notice of and appear at the taking of testimony, produce and cross examine witnesses, and to be heard in person or by counsel upon brief and at the oral argument if oral argument is granted.

Respectfully submitted,

/s/ EDWARD DUMBAULD
Edward Dumbauld
Special Assistant
to the Attorney General

/s/ SADIE B. ARBUTHNOT
Sadie B. Arbuthnot

/s/ JAMES A. TOMLINSON
James A. Tomlinson
Special Attorneys

By direction of

WENDELL BERGE
Assistant Attorney General

Dated at Washington, D. C.
December 21, 1943

[fol. 4447] SADIE B. ARBUTHNOT, being duly sworn deposes and says:

That she is a Special Attorney in the Department of Justice and is authorized to execute and file the foregoing motion; that she has read and is familiar with the contents thereof; that she intends and desires that in granting or denying the petition herein, the Board shall place full and complete reliance upon the accuracy of each and every statement therein contained; that she is familiar with the facts therein set forth; that to the best of her information and belief every statement contained in the instrument is true and no such statement is misleading.

/s/ SADIE B. ARBUTHNOT
Sadie B. Arbuthnot

Subscribed and sworn to before me this 21st day of December 1943.

/s/ DOROTHY J. HEALE
Notary Public, D. C.

(SEAL)

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing petition for leave to intervene has been served on each necessary party in the above entitled proceeding.

/s/ SADIE B. ARBUTHNOT
Sadie B. Arbuthnot

Dated at Washington, D. C.
December 21, 1943

[fol. 4448]

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

DOCKET No. 1182

HUGHES TOOL CO.—CONTROL OF TWA

In the matter of the application of Hughes Tool Company for approval, if such approval is necessary, of control of Transcontinental & Western Air, Inc., under section 408 of the Civil Aeronautics Act of 1938, as amended.

REPORT OF PREHEARING CONFERENCE
Served Jan 10 1944

Upon:

George A. Spater for Hughes Tool Company

Sadie B. Arbuthnot for intervener, the Department of Justice

Louis W. Goodkind, Public Counsel.

Exceptions, if any, to matters contained in this report must be filed with Examiner Frank A. Law, Jr., and served upon all other counsel within 8 days from the date of service shown above.

[fol. 4449]

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In the matter of the application of Hughes Tool Company for approval, if such approval is necessary, of control of Transcontinental & Western Air, Inc., under section 408 of the Civil Aeronautics Act of 1938, as amended.

REPORT OF PREHEARING CONFERENCE
HELD JANUARY 4, 1944

This proceeding involves an application by Hughes Tool Company of Culver City, Calif., a Delaware corporation, for authority, if it be necessary under the Act, to acquire control by the purchase and holding of stock of TWA, an air carrier engaged in interstate commerce.

The United States Department of Justice, Anti-Trust Division, has requested and been authorized to intervene.

Pursuant to notice thereof given to interested parties, a prehearing conference concerning the matter was held on January 4, 1944, at the offices of the Civil Aeronautics Board, Washington, D. C., at which were present:

Frank A. Law, Jr., Examiner, presiding

George A. Spater for Hughes Tool Company

Sadie B. Arbuthnot for intervener, the Department of Justice

Louis W. Goodkind, Public Counsel

Miss Arbuthnot stated that Mr. Edward Dumbauld and she will appear in any further proceedings, but that she had been instructed to take no active part in the conference.

She was therefore unable to discuss the position of the Department of Justice or its interest in the proceeding, when requested to do so.

The Hughes Tool Company is said to be principally engaged in the manufacture of oil field equipment, but it is also engaged, through a department known as "Hughes Aircraft Company" in the development and construction of aircraft and aircraft parts for the Government or for war purposes.

The application of Hughes Tool Company shows that as of July 31, 1943, applicant was the owner of 440,050 shares of the capital stock of TWA, constituting 45.6 percent of the total shares outstanding on that date.

[fol. 4450] The issues are (1) whether under the law the acquisition requires approval; and if it does (2) whether it is inconsistent with the public interest. The first issue involves two points of fact. As to the first counsel agree to stipulate that ownership of 45.6 percent of the outstanding stock of TWA is sufficient under rulings of the Board to constitute control. The second question is as to whether at the time of acquisition of control the Hughes Tool Company was engaged in any phase of aeronautics and if not, what the effect of subsequent engagement in such activities has in law. Applicant will furnish evidence as to stock ownership at significant dates in relationship to the dates when engagement in a phase of aeronautics came into contemplation by Hughes and was consummated.

Attached as Appendix 1 is a tentative list of evidence requested by Public Counsel which bears upon the question of public interest. Applicant agrees to furnish this evidence with the reservation that to the extent Government contracts are regarded as confidential they will be withheld from public disclosure. Also bearing upon the public interest, applicant will furnish evidence as to Mr. Hughes' interest in the development and use of aviation and aviation equipment and facilities. It is understood that the position of the Department of Justice depends largely upon the facts disclosed. Although the representative of the Department was

unable to say whether further evidence was needed in connection with its intervention the Examiner requested that he, the applicant, and Public Counsel be advised as promptly as possible whether such was wanted and its nature.

All evidence, including testimony, will be reduced to writing and submitted in that form for examination, and the hearing record will be made upon that basis, but Public Counsel reserves the right to request, prior to the hearing, that witnesses be present for cross examination should that appear necessary.

The proposed evidence will be prepared and two copies sent to the Examiner, the Department of Justice, and Public Counsel on or before February 3, and the hearing is tentatively set for February 17, 1944.

Frank A. Law, Jr.
Examiner

Attach.

[fol. 4451] APPENDIX 1

HUGHES TOOL COMPANY—TWA

Docket No. 1182

TENTATIVE LIST OF EVIDENCE TO BE FURNISHED BY HUGHES TOOL CO.

1. Individuals holding offices and/or directorships in both Hughes Tool Co. and TWA
   a. Names
   b. Addresses
   c. Positions held
   d. Number of shares and proportion of interest held in either company

2. Hughes Aircraft Company
    a. Number of employees, by categories
    b. Brief description of physical plant (whether owned or leased) presently occupied or contemplated
    c. Operations
        1. Scope of present operations
        2. Scope of anticipated operations
        3. Date production commenced or anticipated date of commencement
        4. Number of aircraft produced to date and anticipated rate of production
    d. Description of aircraft now being, or planned to be, manufactured
        1. Type
        2. Capacity in cargo and/or passengers
        3. Adaptability to commercial air transport service
    e. Copies of any contracts with Government, or any other parties, relating to production or sale of aircraft
    f. Balance sheet and profit and loss statement
3. Hughes Tool Company
    a. Brief description of business and products, including number of employees.
    b. Balance sheet and profit and loss statement
    c. Change, if any, since July 31, 1943, in proportion of TWA stock held
    d. Names and description of, and proportionate interests held by Hughes Tool Co. and/or Howard R. Hughes in, other business enterprises, corporate or otherwise, which are, or are inter-

ested in, directly or indirectly, air carriers, persons engaged in any other phase of aeronautics or common carriers (There interests are indirect, the information is to be given only when the interest held by Hughes Tool Co. and/or Howard R. Hughes is 5 percent or more of the total stock or other interest in the first next enterprise in the chain of ownership.)

[fol. 4452] [Handwritten notation—Orig.]

[Stamp—Received—Docket Section—Proceedings Division —Mar 21—illegible—Economic Bureau—Civil Aeronautics Board]

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket No. 1182

In the Matter of:

HUGHES TOOL COMPANY, a Delaware Corp. FOR APPROVAL, if such approval is necessary of control of the TRANSCONTINENTAL AND WESTERN AIR, INC. under Section 408 of the Civil Aeronautics Act of 1938, as amended

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Washington, D. C.
March 17, 1944

Transcript of Stenographic Report of Hearing held before:

Volume 1

Pages 1-23

[fol. 4453]

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Noah Dietrich	5			

EXHIBITS

	For Identification	In Evidence
Applicant's Ex. 1, 2, 2-A 3, 3-A, 3-B and 4	3	3
		Page
Stipulation dated March 17, 1944.		15

[fol. 4454]

THE UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

Docket No. 1182

In the Matter of the Application of

Hughes Tool Company, a Delaware corporation, for approval, if such approval is necessary, of control of the Transcontinental and Western Air, Inc., under Section 408 of the Civil Aeronautics Act of 1938, as amended.

Room 3237 Post Office Building,
Washington, D. C.
Friday, March 17, 1944.

The above entitled matter came on for hearing at 10:00 o'clock a. m.

Before:

Frank A. Law, Jr., Examiner.

APPEARANCES:

GEORGE A. SPATER, 25 Broadway, New York, New York, attorney for applicant.

SADIE B. ARBUTHNOT, appearing for the Department of Justice, intervener.

LOUIS W. GOODKIND, Public Counsel.

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[fol. 4455] PROCEEDINGS

Examiner Law: The Civil Aeronautics Board has set for hearing at this time the application of Hughes Tool Company for approval, if approval is considered necessary, of control of Transcontinental & Western Air, Inc., under Section 408 of the Civil Aeronautics Act of 1938, as amended.

Who appears for Hughes Tool Company?

Mr. Spater: George A. Spater, 25 Broadway, New York City.

Examiner Law: The Department of Justice is an intervener in the proceeding. Is there an appearance for the Department?

Miss Arbuthnot: Sadie B. Arbuthnot.

Examiner Law: And Public Counsel?

Mr. Goodkind: Louis W. Goodkind.

Examiner Law: I understand that the record in the proceeding has practically all been stipulated. Is that correct?

Mr. Goodkind: It has not been stipulated but a good deal of it has been incorporated in Exhibit form, and I understood those exhibits are to be introduced.

Examiner Law: What I meant by stipulation was it had been agreed upon in advance and will be stipulated.

Isn't that true?

Mr. Goodkind: Well, Public Counsel is not in position to stipulate the truth of any of these materials. I understand they will be offered as exhibits by the applicant. It is true that we do have a brief stipulation.

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[fol. 4456] Mr. Spater: I think what is a correct statement, Mr. Examiner, is that the exhibits have been previ-

ously distributed to all parties and that so far as I know there is no objection to their introduction in evidence.

Mr. Goodkind: That is correct.

Mr. Spater: That being the case I would like to offer a volume containing the exhibits of Hughes Tool Company. The index indicates that there are seven exhibits numbered 1, 2, 2-A, 3, 3-A, 3-B, and 4, and I would like to have that volume I hand you marked for identification.

Examiner Law: It will be so recorded.

(The volume referred to was marked Applicant's Exhibits 1, 2, 2-A, 3, 3-A, 3-B, and 4, for identification.)

Mr. Spater: If there is no objection, Mr. Examiner, I would like to have these exhibits admitted into evidence.

Examiner Law: Is there any objection?

Mr. Goodkind: No objection.

Examiner Law: And none from the Department of Justice or Public Counsel?

Miss Arbuthnot: No objection.

Mr. Goodkind: No objection.

Examiner Law: They will be received.

(The volume referred to, heretofore marked for identification Applicant's Exhibits 1, 2, 2-A, 3, 3-A, 3-B, and 4, was received in evidence.)

Mr. Spater: In connection with these exhibits certain of them must be maintained, in my opinion, on a confidential

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[fol. 4457] basis. I have no objection to the public disclosure of Exhibits 1 and 4. The balance of the exhibits are either restricted, confidential, or secret in the Army files except for a small group of which I will speak in a moment, but that reference I made to the Army materials applies also to Exhibit 2 which is an affidavit of Mr. Lockhart attaching certain material which has been filed with the S.E.C.

That has been filed on a confidential basis with the S.E.C. We have no objection if and when the S.E.C. releases that information for public disclosure that the CAB similarly release the material for public disclosure, but I think that the remaining material should, until approved by the Army, be treated by the Board as confidential.

Examiner Law: That will be regarded as a motion and presented to the Board for its consideration.

Are there any questions you would like to ask of any one present, Mr. Goodkind?

Mr. Goodkind: Yes, I think I would have some questions.

Was it the intention of applicant's counsel to call any witnesses?

Mr. Spater: No, sir. I might add, so that it appears on the record, that I had prepared the case and had cleared with other counsel in the case on the basis that no witnesses would be available.

Fortunately Mr. Dietrich, who is executive vice-president of the Hughes Tool Company, is in town and I asked him to come over here today. He is available for any questions

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[fol. 4458] any one might wish to ask. I have no objection, but the matter has been prepared on the basis that no witness would be heard.

Mr. Goodkind: Do I understand then the applicant's case is closed?

Mr. Spater: That is correct.

Examiner Law: Unless it is your desire to ask some questions of the person available and familiar with the facts.

Mr. Goodkind: I do desire to ask such questions, but I suppose then they are my witnesses; is that correct?

Mr. Spater: No, I would be glad to have the witness examined on the basis of the exhibits.

Would you like to call Mr. Dietrich?

Mr. Goodkind: Yes.

Mr. Spater: Will you take the stand?

Examiner Law: Interrupting for a moment, do I understand that the supplemental material which was asked for by Mr. Goodkind's most recent letter to you of March 9th is included in this volume?

Mr. Spater: Yes, it is included as Exhibit 3-B.

Whereupon, NOAH DIETRICH, a witness called on behalf of the applicant, being first duly sworn, was examined and testified as follows:

Cross examination.

By Mr. Goodkind:

Q. Mr. Dietrich, you are an officer of Hughes Tool Company?

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[fol. 4459] A. Yes, executive vice-president.

Q. Do I understand that certain of the exhibits which have just been received in evidence were prepared by you or under your direction?

A. That is correct.

Q. And you have sworn to the truth of the statements contained in certain of them; is that correct?

A. I have.

Q. I think the record might show which ones those are. Would those be Exhibits 3, 3-A and 3-B?

A. That is right.

Q. Mr. Dietrich, are you familiar with the negotiations between the Hughes Tool Company and the Lockheed Aircraft Company with regard to the manufacturing of Constellation planes?

A. I think I am, yes.

Q. When approximately was that matter first taken up with Lockheed?

A. I would have to guess, but it was approximately two and one-half years ago. That is purely a guess now.

Q. The first agreement, or the first material of any kind that we have in these exhibits relating to such matters, is dated some time in 1939.

A. That would be correct.

Q. I believe it was June.

A. I would have to refresh my memory on that. It has been several years ago.

Q. My question is this: how long prior to the date of this earliest exhibit was this matter taken up with Lockheed

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[fol. 4460] by Hughes Tool Company?

A. Prior to the execution of the first agreement with Lockheed you mean?

Q. Yes.

A. Oh, I think the discussions probably extended over a period of six months prior to that.

Q. And at that time when the matter was first taken up with Lockheed who was in possession of the plans of this proposed aircraft?

A. The plans were in the possession of Lockheed, although Hughes had access to them and had certain plans in his possession. That is as to my own knowledge.

Now, I understand Mr. Frye also had access to them and had copies of the plans.

Q. Were these plans the fruit of the joint efforts of Lockheed, Hughes, and TWA?

A. Yes, that is correct. I would say they originated with Mr. Hughes and Mr. Frye, who then interested Lockheed.

Q. When did they first interest Lockheed? When was the first approach made to Lockheed?

A. It was after our acquisition of the first stock in TWA. You can fix it by that date.

There was no interest on our part to interest Lockheed in the production of such a plane prior to our interest in TWA.

Q. Did you become interested in the production of Constellation aircraft for the benefit of TWA?

A. I would say for the primary benefit of TWA, yes.

Q. Was there any connection between the undertaking

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[fol. 4461] to produce this aircraft and the acquisition of stock by your company in TWA?

A. No; no connection there except that we had no interest, so far as I know in inducing Lockheed to undertake the construction of this type of plane prior to our acquisition of TWA stock.

Q. Do I understand this correctly, that your negotiations with Lockheed with regard to the manufacture and production of Constellation aircraft was primarily for the purpose of making such aircraft available to TWA?

A. That is correct.

Q. Was there any other purpose in your negotiations?

A. Originally I would say no.

Q. Has any other purpose arisen?

A. I might make an explanation, if I am permitted, and that is that the original arrangement involved 15 planes. I think there were some prior discussions and prior agreements, but 15 planes were then decided upon and then another 25 planes were brought into the contract.

I think our position on that is that 15 represented the estimated requirements of TWA in so far as those planes were concerned and in so far as the future could be seen.

With respect to the remaining 25 planes I think our position is that if we got to the point where TWA would require those we would be glad to step aside and let them come in to the extent of the additional planes.

If TWA had no interest then the planes would be available to us for whatever purpose we might find for them.

Q. I understand from the last exhibit produced here

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[fol. 4462] today which is Exhibit 3-B, that the purpose of creating or continuing the contract provisions whereby Hughes Tool Company has certain rights to purchase the second group of 25 planes, the purpose of such provision is that Hughes Tool Company be permitted to sell those aircraft; is that right?

A. That is right.

Q. I take it that the interest in the purchase and sale of such aircraft is simply the interest of any seller of a desirable commodity, that is to sell for profit; is that correct?

A. Well, aside from this TWA situation, which we would defer to.

You see, Mr. Goodkind, if I can explain, the Hughes Tool Company assumed the obligation for the purchase of these planes, and we believe that we were entitled to some consideration therefor after discharging any obligation to TWA, and when they indicated 15 as the extent of their interest in those planes, you see, and as I understand our negotiations with Lockheed, and I was a party to them, Lockheed wanted us to show an interest in the production of at least 40 planes so that they would be warranted in going ahead with a new model.

On the other hand, having discharged our obligation to TWA by giving them access to the first 15 we naturally assumed we would be entitled to any profit if there was a sale of the remaining planes, in consideration of the gamble we took in making the original commitment.

Q. By the way, with reference to the first purchases

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[fol. 4463] of stock by your company in TWA, was the first purchase of such stock made from TWA?

A. No.

Q. The first purchase was on the open market?

A. That is right.

Q. That was a rather small block of stock?

A. That is right.

Q. When was the purchase of the large block from TWA effected?

A. I would have to refer to the statement to get that date.

Mr. Spater: Those are all in the exhibits, Mr. Examiner.

By Mr. Goodkind:

Q. I believe that appears in Exhibit 3-A, on the first page, March 2, 1940.

A. Yes, that is the date of the purchase.

Mr. Spater: On page 7 of Exhibit 3 there is some additional information. The initial purchase is shown there as being March, 1939, 600 shares.

The Witness: That is right.

Mr. Spater: And then after that there was a purchase in April of 64,000 odd shares, as shown on the first page of Exhibit 3-A, and then in May a further purchase of 2,500 shares.

The Witness: That is right.

By Mr. Goodkind:

Q. With reference to the purchase on March 2, 1940, of the block of 119,000 odd shares, do you know whether those shares represented treasury stock or was that a new issue?

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[fol. 4464] A. No, it was treasury stock.

Mr. Spater: Do you mean stock which had previously been outstanding and had been reacquired?

Mr. Goodkind: Yes.

The Witness: It may have been unissued stock. It was a part of the original authorization of one million shares.

Mr. Spater: That stock had not been previously outstanding, I might add, for the record.

The Witness: That is right. It was unissued stock, but had been previously authorized.

By Mr. Goodkind:

Q. Was there any understanding connected with that purchase of stock as to the purchase for which the proceeds should be devoted by TWA?

A. No, there was no commitment on their part so far as we were concerned.

Q. Was it anticipated by you that the proceeds should be devoted to the purchase of Constellation aircraft?

A. No, that did not come up in connection with that.

Mr. Hughes, Mr. Frye, and I discussed this stock purchase together, and there was no reference to Constellation or anything else other than just an outright purchase of the stock.

Q. But agreements with Lockheed contain certain restricted provisions whereby Hughes Tool Company retains control, you might say, over the sale of other Constellation aircraft; that is, they could not be sold for certain periods

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[fol. 4465] of time to other parties without permission of Hughes Tool Company.

For whose benefit were such provisions made?

A. I would say for the benefit of TWA.

Examiner Law: May I interrupt a moment and revert back to that stock acquisition and ask if Mr. Dietrich knows what it was that originally interested the Hughes Tool Company in TWA.

The Witness: Yes. Mr. Frye approached Mr. Hughes and pointed out the advantages of becoming financially

interested in TWA, and the advantages appeared obvious, and we proceeded with acquiring stock.

By Mr. Goodkind:

Q. I wanted to ask you, Mr. Dietrich, whether there are any loans outstanding between Hughes Tool Company and TWA?

A. No, there have been no other financial transactions between the two companies.

Q. I take it you are familiar with the operations of Hughes Aircraft Company which is a division of your company?

A. That is right.

Q. A good part of these exhibits is taken up with the matter of the production of a certain type of flying boat and I had noted in the papers recently some intimations that possibly that project would fall through. Has that occurred?

A. I don't know whether that is information I could disclose or not.

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[fol. 4466] Mr. Spater: I don't actually know the facts of it, but is that essential to the hearing? I don't know what the facts are myself.

The Witness: I would be glad to make a disclosure.

Mr. Goodkind: I think in so far as these operations furnish any ground for this proceeding it might be pertinent to know whether they have been abandoned.

Mr, Spater: There are other operations.

The Witness: I will be glad to answer it.

Mr. Spater: Off the record.

(Discussion off the record.)

Examiner Law: All right; pursuant to the discussion off the record, we will adjourn the public session and this testimony will be given in executive session.

(Whereupon, the public hearing was recessed, and an executive session held, after which the public hearing was resumed and the following proceedings were had:)

By Mr. Goodkind:

Q. Mr. Howard Hughes is neither an officer nor a director of your company?

A. You mean of TWA or of the Hughes Tool Company?

Q. Hughes Tool Company.

A. He is president and a director of Hughes Tool Company.

Q. And is he presently an officer or director of Kaiser-Hughes?

A. Yes, he is a director.

Mr. Spater: That is shown in Exhibit 3-A, page 2. Mr. Hughes is president and a director.

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[fol. 4467] The Witness: Yes, we are represented on that board by Hughes, McCarthy and Hall.

Mr. Goodkind: I don't think I have any further questions.

Examiner Law: Any questions by the Department?

Miss Arbuthnot: No questions.

Mr. Spater: I have no questions.

Examiner Law: Thank you, sir. You are excused.

(Witness excused.)

Examiner Law: Are there any further questions you would like to ask, Mr. Goodkind?

Mr. Goodkind: I don't think I have any further examination.

Examiner Law: Off the record.

(Discussion off the record.)

Examiner Law: Are there any questions by the Department of Justice?

Miss Arbuthnot: No questions.

Examiner Law: Are there any questions you would like to ask any one, Mr. Spater?

Mr. Spater: No, I have no questions I would like to ask, and as far as I am concerned that closes the case of the applicant.

I understand that other counsel have no other witnesses.

Mr. Goodkind: Public Counsel has no witnesses but would like to offer a stipulation which has been entered

into by all the parties to this proceeding, and I hand the Examiner an original and a copy of the stipulation.

Examiner Law: It will be received.

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[fol. 4468] (The stipulation dated March 17, 1944, signed by all parties, was received and filed with the record.)

Examiner Law: It is my understanding that there has been an agreement between counsel that the present ownership of Hughes Tool Company in TWA represents control. Is that shown of record?

Mr. Goodkind: That is concerned in the first paragraph of the stipulation.

Mr. Spater: I think the exact language on that, Mr. Examiner, is in the body of the stipulation, which reads as follows:

"It is hereby further stipulated and agreed by and between counsel for the applicant and counsel for the intervener herein and Public Counsel that, for the purposes of any proceedings herein under Section 408 of the Civil Aeronautics Act, the applicant, Hughes Tool Company, has acquired control of Transcontinental & Western Air, Inc., by reason of its purchase of approximately 440,050 shares of the capital stock of Transcontinental & Western Air, Inc."

Examiner Law: Is there anything further?

Miss Arbuthnot: If it is appropriate to do so at this time, Mr. Examiner, I would like to make a statement with respect to the position of the Department of Justice.

Examiner Law: We will be very glad to have it, Miss Arbuthnot.

Miss Arbuthnot: The Department intervened in this proceeding because of possible unreasonable restraints on competition arising out of control of an air transport

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[fol. 4469] company by a company manufacturing air transport equipment. As we stated in our petition, participation by the Department of Justice in this proceeding is in furtherance of the anti-monopoly policy of Congress, as expressed in the Civil Aeronautics Act, which the Board

administers, and the federal anti-trust laws, which the Department must enforce. In other industries involving similar control, it has been necessary to seek relief in the courts, and divorcement of manufacturing and operating companies has been ordered. In the light of its experience, the Department urges here that a repetition of such restraints and monopolies, found to exist in other industries, be avoided in this new and dynamic industry.

It appears from the exhibits submitted by the Hughes Tool Company in this proceeding that a subsidy has been given TWA through the assignment to it of the Hughes-Lockheed contracts for the manufacture and purchase of forty Constellation-type planes. However, this assignment, though a subsidy, is not the type of subsidy which a controlled operating company might ordinarily receive from a controlling manufacturing concern, inasmuch as such an assignment could have been made to TWA by Hughes Tool Company as a disinterested party in no way associated with the aircraft industry.

Competition of independent air lines may be restrained because of the provisions of Paragraph 9 of the TWA-Lockheed contract (Exhibit 2-A) which, in substance, prohibits sale or lease of any Constellation-type planes for use in the United States for 30 months after delivery of the last

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[fol. 4470] airplane purchased by TWA under said contract. The provision of said Paragraph 8 of the contract under which Lockheed agrees to bind each purchaser of Constellation-type planes, except the Government and TWA, "preventing commercial use of the airplane in the United States and preventing resale directly or indirectly of any of said airplanes for delivery to or use in the United States during said period of thirty months" also restrains competition by independent air lines. Substantially similar provisions are contained in the original Hughes-Lockheed contracts (Exhibit 3-A). The Department of Justice respectfully submits that these restraints should be considered by the Board, together with other facts in the case, in determining the nature and scope of its order.

On page 3 of Exhibit 3-A there appears a "Statement of post-war plans for Hughes Aircraft Company (including Culver City, St. Andrews and Armament plants) and also for Hughes Tool Company in regard to Aircraft Strut and Dickson Gun plants." This statement, together with the statements made on pages 3 and 4 of Exhibit 3, indicates that, at the present time, Hughes Tool Company, in so far as the manufacture of aircraft and aircraft parts is concerned, is engaged solely in war production work for the United States Government and Government contractors. These exhibits also show that the only plant now operated by the Hughes Tool Company and/or Hughes Aircraft Company, which may possibly remain in operation upon the termination of war production orders, is the plant located at Culver City. It is stated that this plant "is not equipped

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[fol. 4471] for either large scale or economical production of aircraft or aircraft parts," but that "while no plans have been formulated, it is likely that this plant will be continued to be used as an experimental and development laboratory."

In view of the above circumstances, the Department of Justice respectfully recommends that, should an order be entered approving the acquisition by Hughes Tool Company of control of TWA, such an order should condition approval upon the fact that Hughes Tool Company is not now engaged in the manufacture of aircraft or aircraft parts for commercial use.

The Department further recommends that the Civil Aeronautics Board retain jurisdiction of the matter for the purpose of reconsidering the question should Hughes Tool Company, at any time, commence manufacture of aircraft or aircraft parts for commercial use.

Mr. Spater: May I say something?

Examiner Law: You may, yes, if you wish to. You may reserve it for brief, however.

Mr. Spater: On that point, Mr. Examiner, I am not anticipating filing any brief.

Examiner Law: You did not anticipate filing a brief?

Mr. Spater: No, sir.

Examiner Law: I anticipated asking for one.

Mr. Spater: Of course if the Examiner asks for one there will be briefs.

Regardless of whether there are briefs or not, and I will be glad to file one if the Examiner requests it, I would like to make a statement at this time to clear up one or two

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[fol. 4472] points brought out in Miss Arbuthnot's statement of the position of the Department of Justice.

Examiner Law: Proceed.

Mr. Spater: There are three or four matters I wish to touch upon.

The first is the statement by Miss Arbuthnot that it appears from the exhibits submitted by Hughes Tool Company in this proceeding that a subsidy has been given TWA through the assignment to it of the Hughes-Lockheed contracts for the manufacture and purchase of 40 Constellation type planes.

I am at a loss to find out where that subsidy might exist.

The facts in the record indicate that from the very outset the contract was negotiated by Mr. Jack Frye, president of TWA, together with Mr. Hughes, on behalf of TWA with respect to 15 airplanes, and that while for practical reasons the initial contract was assigned by Hughes Tool Company it has always been the understanding of TWA that the assignment that was referred to here would eventually take place, so that in terms of law, from the standpoint of beneficial interest, TWA actually had an interest in 15 airplanes from the time the first contract was entered into until today.

Examiner Law: Would it have an enforceable interest?

Mr. Spater: I think it was one you could go into a Court of Equity and enforce if you were required to and certainly you would have no difficulty on that.

The assignment was merely putting into legal terms the arrangement TWA had, and you will find the document

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[fol. 4473] here referred to the fact that at a very early date in the arrangements, in August, 1939, TWA had an option on these same 15 airplanes, and that initially TWA's contract was carried out in the form of an option and then when it came to the time when the Government wanted the airplanes Hughes gave the assignment and it was reassigned to the Government, but the interest has existed from the start, and the act of assignment was purely a mechanical step.

The second point relates to the so-called restraints that exist in the TWA-Lockheed contract on the disposal of the Constellation aircraft by Lockheed to domestic users, American flying operators in the United States for a period of 30 months after the delivery to TWA of the ninth airplane—and by the way, there are 80 airplanes, 40 to PanAmerican Airways and 40 to the Hughes Company—the restraint relates only to the 30 month period after the delivery of the ninth airplane.

As to that I think the Board should keep in mind that it has no relation to the Hughes deal because if the Board should by some strange happening decide that Hughes shouldn't control TWA that restraint would still exist because that is an arrangement between Lockheed and TWA, and in my opinion there is no question about the propriety of that arrangement because of the development of that idea, and TWA is entitled to a degree of protection which is not only common in this type of arrangement but in any normal business transaction, but the important thing is, regardless of what the Board does here, that restraint is there, if it is a restraint.

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[fol. 4474] The final point I wish to touch upon is the recommendation by the Department of Justice that CAB's approval should be conditioned on further activity of Hughes Tool Company in the manufacture of aircraft.

There is no objection on the part of Hughes Tool Company to some such arrangement. I am not certain that the arrangement that is suggested by the Department of Justice is the ideal one.

I think perhaps preferably if the Board's approval would take this form it would be more satisfactory, and that is, that approval be granted on the condition that if Hughes Tool Company should commence the manufacture of aircraft, or aircraft parts, for commercial use and if TWA should desire to acquire such aircraft, or aircraft parts, then TWA should come back to the Board and ask approval.

Examiner Law: You mean ask approval of the purchase?

Mr. Spater: Ask approval of the purchase or of the relationship.

Examiner Law: You mean submit it to the Board in the form of an agreement for approval under Section 412?

Mr. Spater: Some such action.

There is no objection to having to come back to the Board if such an event should take place. It doesn't appear that is a very likely thing at the present time, but I don't think the restriction that is suggested by the Department of Justice is mechanically good because if they commence the manufacture of aircraft for commercial use, it might be nuts or bolts which might be sold to K.L.M. somewhere, I don't know, and the requirement of coming in again and having a

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[fol. 4475] hearing when that takes place it seems to me would be an onerous burden, but we have no objection to coming in if TWA becomes interested, and I should think that would be the only ground on which any objection would exist.

Mr. Goodkind: In regard to the disposition of the case and the mechanics of possible approval or disapproval, Public Counsel prefers to withhold its discussion until the brief and merely wishes to say that its silence on that point at this time does not indicate approval or disapproval of the position of the Department of Justice.

Mr. Spater: You say—

Examiner Law: He is reserving his views until briefs are filed.

Mr. Spater: You are reserving your views on the ultimate conditions here or on the form of the conditions?

Mr. Goodkind: Well, both.

Examiner Law: I presume the record is concluded, is that correct?

Mr. Spater: I have nothing further to add, Mr. Examiner.

Examiner Law: I hear nothing to the contrary.

The record is closed.

Off the record.

(Discussion off the record.)

Examiner Law: Briefs will be filed on or before April 15, 1944.

Is the Department of Justice able to state at this time whether it will participate in briefs?

Miss Arbuthnot: It may be that we will supplement this statement to a certain extent, but I rather doubt it.

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[fol. 4476] Examiner Law: Very well.

The case is closed.

(Whereupon, at 10:50 o'clock a.m., March 17, 1944, the hearing in the above-entitled matter was closed.)

[fol. 4477] *Orig* CONFIDENTIAL

[Stamp—Received—Docket Section—Proceedings Division —Apr 22—1:04 PM '44—Receiving Bureau—Civil Aeronautics Board]

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Docket No. 1182

Before the Hon. Frank A. Law, Jr., Examiner

In the Matter of the Application of

HUGHES TOOL COMPANY,

for approval, under Section 408 of the Civil Aeronautics Act of 1938, as amended, of its acquisition of control of Transcontinental & Western Air, Inc.

BRIEF OF PUBLIC COUNSEL

Washington, D. C.

Dated: April 22, 1944.

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[fol. 4479]

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PRELIMINARY STATEMENT

Hughes Tool Company (hereinafter referred to as Hughes Tool) filed an application with the Board on November 19, 1943, for the approval, pursuant to section 408 of the Civil Aeronautics Act of 1938, as amended, "if such approval is deemed necessary", of its acquisition of control of Transcontinental & Western Air, Inc. (hereinafter referred to as TWA). A public hearing was held upon the application on March 17, 1944, before the Hon. Frank A. Law, Jr., Examiner. The Department of Justice of the United States, whose petition to intervene had been granted,[1] appeared and participated actively in the proceedings.

The applicant has moved that most of the exhibits received in evidence herein [2] be accorded confidential treat-

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[1] Order, Serial No. 2619, dated January 4, 1944.

[2] Exhibits 2, 2-A, 3, 3-A and 3-B.

ment on account of the military nature of the matters they contain (Tr. pp. 3-4).[3] In addition, for the same reasons, part of the proceedings upon the hearing were conducted in executive session (Tr. p. 13). Inasmuch as it is necessary in this brief to discuss at some length and detail the matter set forth in these confidential exhibits, and as it would not be convenient to excise those portions of the discussion and incorporate them in a separate document, public counsel requests that his entire brief be treated as confidential in the same manner as the exhibits referred to.

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[fol. 4480]

The Issues

As TWA is an air carrier and Hughes Tool is a "person engaged in any other phase of aeronautics,"[4] the acquisition of control of the former by the latter falls within the purview of section 408(a)(5) of the Act, declaring such transaction to be unlawful unless approved by order of the Board. Section 408(b) provides that the acquisition shall be approved, upon such terms and conditions as the Board shall find to be just and reasonable and with such modifications as the Board may prescribe, unless the Board finds that the acquisition of control "will not be consistent with the public interest" or that certain conditions laid down in that section of the Act will not be fulfilled.

The broad issue herein, therefore, is whether the acquisition of control is not consistent with the public interest. Stated somewhat more narrowly and specifically, the primary issue is whether it is consistent with the public interest for an air carrier to be controlled by a corporation engaged in the manufacture and sale of aircraft.

The Facts

TWA, a Delaware corporation, is one of the largest domestic air carriers, operating from coast to coast and hold-

[3] See also Motion to Withhold Information from Public Disclosure, filed on April 19, 1944.

[4] See further discussion under Point I, *infra*.

ing certificates of public convenience and necessity for the transportation of persons, property and mail over Routes Nos. 2, 36, 37, 38, 44, 58 and 61. As of December 31, 1943, TWA had outstanding 965,173 shares of capital stock (Ex. 2-A). As of the same date, Hughes Tool owned 440,050 of these shares, or approximately 45.6 per cent (Ex. 3, p. 7). The parties herein have stipulated for the purposes of the instant proceeding that the interest of Hughes Tool in TWA constitutes a controlling interest.[5]

This control was acquired by Hughes Tool in piece-meal fashion, over a course of years. An initial purchase of only 600 shares was made on the open market in March, 1939 (Ex. 3, p. 7; Ex. 3-A, p. 1). The investment was prompted by Mr. Jack Frye, president of TWA and an acquaintance of long standing of Mr. Howard R. Hughes, president of Hughes Tool. In the words of Noah Dietrich, executive vice-president of Hughes Tool, who was a party to the discussions (Tr. p. 11), "Mr. Frye approached Mr. Hughes and pointed out the advantages of becoming financially interested in TWA, and the advantages appeared obvious, and we proceeded with acquiring stock." (Tr. p. 12).

Additional purchases were made from time to time, so that at the end of 1939 Hughes Tool held 157,700 shares of TWA stock. By December 31, 1940, these holdings had jumped to 400,250 shares. Small increases were effected during the next two years, and by the end of 1942 Hughes

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[fol. 4481] Tool's stock interest in TWA had reached its present proportion of 440,050 shares (Ex. 3, p. 7). Except for the purchase on March 2, 1940, of a block of 119,154 shares of unissued stock directly from TWA, all the shares were acquired by Hughes Tool on the open market or through investment firms (Ex. 3-A, p. 1).

Hughes Tool, also a Delaware corporation, with principal offices in Houston, Texas, has been for many years primarily engaged in the manufacture of oil well drilling equipment (Ex. 3, p. 5). Largest concern of its kind in the world (Ex. 1, Sched. "B", p. 2), it has made this specialized field sub-

[5] Stipulation dated March 17, 1944.

stantially profitable. As of November 30, 1943, the condensed balance sheet of Hughes Tool showed total assets of $43,266,406, of which $9,218,102 were in cash and Treasury notes, as against all liabilities other than capital and surplus accounts, of $14,278,400 (Ex. 3, Sched. "B"). For the eleven-month period ending November 30, 1943, the firm realized net income after taxes in the amount of $2,947,851 (Ex. 3, Sched. "C").

All of the capital stock of Hughes Tool is held by Howard R. Hughes (Ex. 4), whose father was the founder of the firm. Hughes is the president and a director of Hughes Tool (Tr. p. 13). He holds no office in TWA, and in fact, there are no persons who hold offices or directorships in both Hughes Tool and TWA (Ex. 3, p. 1). Except through Hughes Tool, Hughes owns no interest in any air carrier, common carrier or person engaged in any phase of aeronautics (Ex. 4).

Apart from its acquisition of control of TWA, and both prior to and since the occurrence of that event, Hughes Tool has increasingly engaged in certain other phases of aeronautics. The company has pursued these endeavors in the field of the development, manufacture and sale of aircraft and aircraft parts, and although most of such efforts are intimately connected with the war effort, some antedate the war and are pertinent only to civil air transportation.

These aeronautical activities of Hughes Tool which are closely associated with the war effort are diverse, but all involve directly the manufacture of aircraft or aircraft parts. Some of these activities are being carried on by Hughes Tool under its own name at its home situs of Houston, Texas; the remainder are being conducted at Los Angeles, California, by Hughes Aircraft Company, an unincorporated division of Hughes Tool.

The enterprises being operated at Houston are the Aircraft Strut Plant[6] and Dickson Gun Plant. The former is engaged in the manufacture of aircraft landing gear and struts, is owned by Defense Plant Corporation and is op-

[6] Hughes Tool owns all the capital stock of Hughes Aircraft Strut Company, incorporated in 1943. This corporation has never operated, as the work which it was organized to perform is being done directly by Hughes Tool in the Aircraft Strut Plant (Ex. 3, p. 7).

erated by Hughes Tool for the Army Air Forces on a cost-plus-fixed fee basis. The latter, also government owned,

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[fol. 4482] produces cannon barrels, and is managed by Hughes Tool under contract with the Army Ordnance Department.[7] Approximately 1400 persons are employed in each of the two plants, as contrasted with the approximately 4900 employees at the main (oil field equipment) plant of Hughes Tool (Ex. 3, pp. 5-6). There is no present intention on the part of Hughes Tool to acquire or continue the operation of either the Aircraft Strut Plant or Dickson Gun Plant after the war. (Ex. 3-A, p. 3).

The operations of Hughes Aircraft Company in Los Angeles cover three separate enterprises, employing, in the aggregate 3,335 individuals. One of these, the St. Andrews Plant, occupied under a lease, and employing 813 persons, is equipped as a wood-working shop, and is engaged in turning out plywood aircraft parts for the Consolidated-Vultee Aircraft Corporation. A second Hughes Aircraft enterprise is a machine shop, known as the Armament Division, occupying one floor of a building owned by Hughes Tool. This shop, with only 445 employees, produces small armament appliances, which are supplied to various aircraft companies and to the Army Air Corps. (Ex. 3, pp. 1-3). It is the present intention of Hughes Tool to close both these smaller plants immediately and finally upon the termination of war production orders. (Ex. 3-A, p. 3).

The third aeronautical enterprise of Hughes Tool located in California, and the largest in number of employees of all of the aeronautical endeavors of the company, is the Culver City Plant, or Cargo Division. This unit, with 2,077 employees, is housed in a group of manufacturing buildings, including machine and woodworking shops, located on 360 acres of land, the whole being the property of Hughes Tool except for a small assembly building and its site owned by Defense Plant Corporation. The plant is completely equipped for the building of experimental airplanes, and a

[7] The record is not clear as to whether the product of the Dickson Gun Plant is destined for use on aircraft, but as the product is strictly military in nature and in any event not useful for civil aircraft, the point is not material herein.

runway for aircraft testing is located on the property (Ex. 3, pp. 1-2).

Two lines of endeavor have occupied the attention of the Culver City Plant. One has been the manufacture of a limited number of a special type airplane for the Army Air Forces. The details of this aircraft are secret, but it may be said that it is not adaptable to commercial air transport service (Ex. 3, pp. 3-4).

The second, and principal, line of endeavor pursued by the Culver City Plant is the development and construction of certain cargo-carrying flying boats to be fabricated, so far as possible, from duramold and other non-critical materials (Ex. 3, pp. 2-3 and Ex. 3-A, Sched. "B", p. 2). This project is the subject of a contract (Ex. 3-A, Sched. "E") between Defense Plant Corporation and Kaiser-Hughes, a California corporation, organized in October, 1942, by How-

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[fol. 4483] ard R. Hughes and Henry J. Kaiser,[8] noted dam and ship builder, for the specific purpose of performing this work for the government at cost. In turn, Kaiser-Hughes, as agent for Defense Plant Corporation, entered into a contract with Hughes Tool (Ex. 3, Sched. "A"), whereby the latter would supply certain facilities and the personnel requisite for the work and be supplied with necessary machinery and materials. The contract provides for the performance of this work by Hughes Tool at cost, without either profit or loss (Ex. 3, Sched. "A", p. 5). Up to 18 million dollars of federal funds were to be provided for the project, and it was contemplated that three flying boats would be completed and turned over to the government.[9] None of the three cargo planes has yet been completed.[10]

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[8] The capital stock of Kaiser-Hughes is held equally by Hughes Tool and the Henry J. Kaiser Company (Ex. 3, p. 3), and Howard R. Hughes and Henry J. Kaiser hold the positions of president and chairman of the board of directors, respectively (Ex. 3-A, p. 2).

[9] Under the contracts two of the three aircraft were to be suitable to be flown, and the third was to be suitable for static tests (Ex. 3, Sched. "A", p. 2; Ex. 3-A, Sched. "E", p. 2).

[10] The entire project has recently been reconsidered, and although there is a possibility that it may be dropped, the probabilities are that one flying boat will be constructed (Tr., Exec. Sess., p. 2).

The Culver City Plant will not be closed down upon the termination of the present hostilities. While plans for its future operations are yet indefinite, Hughes Tool expects to continue to use these facilities as a development laboratory (Ex. 3-B, p. 2).

The aeronautical activities of Hughes Tool which are not connected with the war effort concern the manufacture and sale of the four-engine commercial-transport-type airplane now known as the Lockheed "Constellation". The production of this important new passenger and cargo ship was procured, in large part, by Hughes Tool, which for some time retained substantial control over their sale and still holds certain rights to purchase a large number of them.

The history of Hughes Tool's connection with the production and sale of Constellations properly begins with the individual personality of Howard R. Hughes, a factor of the utmost importance in the aeronautical ventures of his company. Scion of a wealthy industrialist, Hughes not only succeeded his father as active head of the Tool Company, but also blazed for himself an independent career in two other widely divergent fields, the production of motion pictures and aviation. In the latter field he is both an expert pilot and an aeronautical engineer and designer. Holder of many speed records, he had, by the age of 32, twice been awarded the Harmon Trophy as the world's outstanding aviator (Ex. 1, Sched. "A" and "B").

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[fol. 4484] Except for the ownership of aircraft used in connection with the business (Ex. 3, p. 7), Hughes Tool's participation in aeronautics prior to the war was solely in furtherance of its president's avocation. In the early and middle Thirties this avocation centered about speed flying, and accordingly Hughes Tool conducted experimental and development work on racing airplanes (Ex. 3, p. 7). After his around-the-world flight in 1938 (Ex. 1, Sched. "A"), Hughes' attention swung to commercial air transportation. With Frye, who, as president of TWA, was keenly interested in the development of larger and speedier commercial aircraft, Hughes collaborated on the designing of a new transport (Tr. p. 7). The collaboration bore fruit, and negotiations promptly were undertaken with various

aircraft manufacturers toward the translation of the paper plans into new equipment for TWA (Ex. 2, Sched. "A", Ex. B, p. 1). To assist in this translation Hughes Tool first entered the commercial air transport industry.

Under date of June 30, 1939, a memorandum agreement (Ex. 3-A, Sched. "D") was entered into between Hughes Tool and Lockheed Aircraft Corporation (hereinafter referred to as Lockheed). This preliminary agreement, which looked toward the early execution of a formal and more comprehensive contract, provided for the sale to Hughes Tool of five Lockheed airplanes, Model "Excalibur A",[11] at a price of $425,000 each, and granted Hughes Tool an option for the purchase of four more such airplanes at $380,000 each. The aircraft were to be delivered in accordance with a fixed schedule, beginning fifteen months after the signing of the formal contract, and full payment for each unit was to be made by Hughes Tool at the time of delivery.

The agreement clearly revealed that TWA was interested in the performance of the contract, but that Hughes Tool was the primary and financially responsible contracting party, so far as Lockheed was concerned, and that in any event, execution of the agreement hinged in part on the personal affiliations of Howard Hughes and Jack Frye. Thus, the agreement, in article 13, expressed Lockheed's understanding that the formal contract would be entered into with Hughes Tool, but provided that a nominee might be substituted, only, however, if its responsibility were found satisfactory by Lockheed. By article 14, a right of cancellation was granted to Lockheed in the event that Frye and Hughes "should sever their association with and/or interest in T.W.A. during the life of this contract."

Extending beyond a mere sale of nine airplanes to Hughes Tool, the agreement sharply restricted the sale of the new transport to anyone else. Lockheed agreed to maintain secrecy as to the details of the aircraft, and agreed

[11] This model, also sometimes described as "Model 49", was later renamed "Constellation" (2-A, Sched. "B", p. 1).

not to approach anyone to buy the airplane until three months prior to the estimated date of the first flight (article 5). Lockheed further bound itself not to deliver the new model to anyone until after delivery of all units to Hughes Tool, and not to deliver it to, or allow its use by, any domestic operator until eight months after the last unit

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[fol. 4485] should be ready for delivery to Hughes Tool (article 11). The agreement still further narrowly limited, for a specified period, the number of such aircraft which Lockheed might deliver to all domestic operators combined (article 11).

The formal contract contemplated by the memorandum agreement was executed by Hughes Tool and Lockheed on July 10, 1939 (Ex. 3-A, Sched. "D"). Following generally the lines of the preliminary understanding, it provided directly for the sale to Hughes Tool of nine Lockheed aircraft, without any option arrangement. The price of each airplane was fixed at $405,000, to be increased by the cost of radio equipment. The contract embodied most of the earlier restrictions on the sale of the new transport to other operators, but contained an exception in favor of the United States Army or Navy (article 9), and a further exception permitting sale of a less powerful model to the Dutch air carrier, KLM (article 10). The contract accorded Hughes Tool extensive rights of supervision over production of the aircraft, including the right to maintain four representatives at the manufacturer's plant (article 7), and granted the buyer the right to employ drawings and data relating to the new airplane for the manufacture of spare parts (article 8).

Like the earlier accord, the formal contract recognized the interest of TWA and the personal significance of Hughes and Frye. It was provided that Hughes Tool might assign its rights to TWA, but not to anyone else except upon Lockheed's consent (article 17), and Lockheed preserved its right to cancel the contract in the event both Frye and Hughes should sever their association with TWA or reduce by more than 50 per cent their respective stock interest, directly or indirectly, in that carrier (article 16).

During the following year, by two separate contracts, dated, respectively, June 11, 1940, and June 25, 1940 (Ex. 3-A, Sched. "D"), Hughes Tool increased its orders for Constellation-type airplanes to a total of forty. Hughes Tool retained limited rights to cancel up to twenty-five of the total number, or to reduce the number to be purchased to any total between fifteen and forty, and received certain assurances as to priority on production. Of the thirty-one airplanes ordered in addition to the original nine, twenty-one were to be purchased at a base unit price of $425,000 (subject to certain increases in certain events) and the remaining ten at a base unit price of $450,000. The contracts thus contemplated, if carried out in full without substantial alteration of the base unit prices, an outlay by Hughes Tool for commercial transport aircraft in the amount of more than 17 million dollars. Apparently only the minor fraction of these orders, to the extent of fifteen aircraft at the lowest of the base unit prices, was placed for the benefit of TWA (Ex. 2, Ex. B, p. 2 et seq.).

Throughout this period Hughes Tool retained and exercised its restrictive control over the sale and production of the new aircraft. By letter dated February 9, 1940 (Ex. 3-A, Sched. "D"), Hughes Tool agreed to permit Lockheed to offer to the United States Army Air Corps and the

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[fol. 4486] British Air Ministry a military bomber designed from the Constellation, but enjoined upon Lockheed the strictest secrecy regarding the production of the transport version of the same airplane.[12] On April 11, 1940, Hughes Tool consented to let Lockheed enter into "confidential discussions and agreements" with representatives of Pan American Airways for the sale to that system of Constellation-type airplanes (Ex. 3-A, Sched. "D"). This consent was conditioned upon Frye's being able to conclude with

[12] "3. You shall not in any way indicate, directly or indirectly, to any of the above mentioned parties that you are, or have any remote thought of, designing or building at any time a transport version of said bomber or one in any way substantially similar in size or otherwise".

Pan American a satisfactory "reciprocal equipment agreement". Consent was further conditioned on Frye's participating in the first discussions and upon the execution by the Pan American representatives of written agreements "positively prohibiting them from disclosing this development to anyone whomsoever" for a stated period of time, and for an additional period thereafter, from disclosing the information to anyone outside of the Pan American organization. In return for the permission to sell the new aircraft to Pan American, Lockheed promised Hughes Tool not to sell the airplane, without the specific written approval of Hughes Tool, to any other United States resident, or for use in the United States, for a period of two and one-half years after delivery to Hughes Tool of the ninth airplane under the basic contract.[13]

Pursuant to this consent, Lockheed did conclude arrangements with Pan American for the sale of forty Constellations, a number equal to the number on order by Hughes Tool. Again on June 26, 1940, Hughes Tool's restrictive control was illustrated in an agreement (Ex. 3-A, Sched. "D") re-allocating priority of deliveries of Constellations by Lockheed as between Hughes Tool, Pan American and KLM.

Formal recognition of TWA's interest in fifteen out of the first sixteen Constellations contracted for by Hughes Tool[14] was accorded in an option given by Hughes Tool to TWA on August 12, 1941 (Ex. 2, Ex. B, pp. 2-3). The option gave TWA the right to acquire, by assignment, all Hughes Tool's interest under the Lockheed contracts in the particular airplanes. This option had not been exercised by the time of the Japanese attack on Pearl Harbor.

The advent of war substantially disrupted the careful planning for the distribution of Constellations. The interest of the United States government in the new aircraft became paramount, and the various parties determined to

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[13] An exception to this restriction was reserved for the Army, Navy or any other branch of the United States government.

[14] The tenth unit was understood to be reserved for Hughes Tool's own purposes (Ex. 2, Ex. B, p. 2).

make the Constellations immediately available to the government while yet preserving for the post-war period, so far as possible, their respective interests in these transports.

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[fol. 4487] Toward the accomplishment of this purpose, Hughes Tool, on September 8, 1942, assigned to TWA all of its right, title and interest in and to its agreements with Lockheed relating to the Constellation (Ex. 2, Sched. "A", Ex. A). On the following day TWA and Lockheed entered into a contract restating and compromising their respective rights (Ex. 2-A, Sched. "D"). In this superseding contract it was agreed that Lockheed would sell to TWA nine of the forty Constellations previously ordered and that TWA would assign to the United States government its rights in respect of the purchase of the remaining thirty-one airplanes. It was expressly contemplated that the nine Constellations to be sold to TWA also would be re-delivered by the latter to the government. Lockheed further agreed (article 9) that until the expiration of thirty months after delivery of the ninth airplane to TWA,[15] or until both Frye and Hughes should sever their association with TWA or reduce by more than fifty per cent their respective stock interests in TWA, whichever should first occur, Lockheed would not sell any Constellation-type airplane for use in the United States, or to any United States resident, other than Pan American or any branch of the United States government. The contract fixed the unit price of the nine Constellations at $421,412, and provided that Lockheed should pay to TWA the sum of $125,000 for "engineering and other costs incurred by TWA in connection with the Constellation airplanes" (article 10).[16]

By contract dated the same day, September 9, 1942, TWA sold the nine Constellations to the United States govern-

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[15] A schedule fixed in the contract provided for delivery of the sixth, seventh, eighth and ninth Constellations to TWA on or before July 31, 1943.

[16] No part of this sum was paid to or for the benefit of Hughes Tool or Howard Hughes (Ex. 3-B, p. 1).

ment at the same unit price which TWA had agreed to pay to Lockheed, receiving from the government an option, exercisable within six months after the cessation of hostilities with Germany and Japan, to re-purchase the airplanes (or certain similar aircraft should the Constellations be then unavailable) at an appraisal price not in excess of the cost of the aircraft to the United States. By the same instrument TWA assigned to the government its rights to the additional thirty-one Constellations, again receiving an option to re-purchase the airplanes. No limitations upon the re-purchase price were set in this second option (Ex. 2, pp. 4-6).

On September 10, 1942, TWA executed a memorandum of agreement with Pan American, which, on the day before, also had assigned to the United States government its rights to purchase forty Constellations, reserving to itself rights of re-purchase similar to those accorded TWA (Ex. 2, Ex. B, p. 5). In this memorandum the two carriers re-allocated, as between themselves, the aircraft which each was entitled to re-purchase from the government (Ex. 2-A, Sched. "C").[17]

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[fol. 4488] The interest of Hughes Tool in Constellation-type aircraft did not lapse with the assignment of September 8, 1942, but rather, it was understood that its rights would survive the war through the re-purchase options which TWA had reserved in its contracts with the government. This understanding, however, was not embodied in any tangible form until the end of the following year, when, on November 22, 1943, (three days after the filing of the application herein) TWA and Hughes Tool executed a contract restating their rights with respect to the Constellations (Ex. 2, Ex. B). It is provided in this agreement that of the available Constellations repurchasable from the government TWA shall be entitled to fifteen, to be chosen by

[17] Subsequent changes in the program of production have rendered dubious the carrying-out of this preliminary agreement (Ex. 2, Ex. B, p. 5).

it first, and Hughes Tool, to the remainder,[18] provided, however, that if more than nine but less than sixteen of the airplanes are available, Hughes Tool shall be entitled to one, to be selected by TWA (article H (1). TWA agrees to use its best efforts on behalf of Hughes Tool with respect to the allocation to TWA, and the purchase for the account and risk of Hughes Tool, of such airplanes as Hughes Tool may designate. The detailed mechanics of effecting the transfer of the airplanes from the government to Hughes Tool, via TWA, are left for definition in a prospective agreement (article H (2).

By the same contract TWA reserves a certain interest in the Constellations which Hughes Tool may acquire from the United States. This interest is in the form of a right of first refusal, whereby in the event that Hughes Tool should desire, within six months after the delivery of any one of the Constellations to Hughes Tool by TWA, to accept a bona fide offer by a third party to purchase the airplane, the airplane must first be offered to TWA upon the same terms (article H (3).

In summary, the aeronautical activities of Hughes Tool which are represented by the Aircraft Strut, Dickson Gun, St. Andrews and Armament plants all are temporary efforts, springing less from the normal incentives of industrial growth than from a desire on the part of the management of Hughes Tool to assist and promote the war effort. While the main driving force behind the Culver City Plant, or Cargo Division, has been the design of aiding in the prosecution of the war, this endeavor embraces, too, the development of aircraft which may be feasible as commercial cargo carriers, and, unlike the other aeronautical activities of the company which are connected with national defense, the operation of this plant is expected to continue after the war, at least as a large scale experimental and development laboratory.

The aeronautical activities of Hughes Tool which are represented by the dealings with Lockheed and others re-

[18] Hughes Tool thus is entitled to purchase for itself a possible maximum of twenty-five.

garding the Constellation fall into more familiar patterns of industrial enterprise. At least three considerations have motivated Hughes Tool in acquiring and retaining, from the beginning of negotiations with Lockheed in 1939, up to the present date, a substantial proprietary interest in Constellation-type aircraft. One consideration has been

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[fol. 4489] the desire to continue its experimental work. This motive would be satisfied by the possession of one airplane (Ex. 3-B, p. 2). A more important consideration has been the desire to obtain new equipment for TWA. The bounds of this interest early were fixed by TWA at fifteen airplanes (Ex. 2, Ex. B, p. 2). The remaining, and so far as number of aircraft and size of monetary outlay are concerned, the primary, interest has flowed from a simple profit motive, an understandable and reasonable desire to benefit financially from the development and promotion of new air transport equipment found to be commercially attractive (Ex. 3-B, p. 2; Tr. pp. 8-9).

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[fol. 4490] DISCUSSION

Public counsel urges that the acquisition of control of TWA by Hughes Tool be approved, but only, however, upon the condition subsequent that such approval shall immediately terminate in the event Hughes Tool should hereafter engage in certain specified phases of aeronautics. This conclusion is based upon findings that the Board has jurisdiction over the acquisition herein; that the control of TWA by Hughes Tool while the latter is continuing to engage in certain phases of aeronautics threatens grave injury to the public; that, on the other hand, the public interest favors the continued participation by Hughes Tool in some phases of aeronautics, and that if suitable safeguards are provided against the public injury threatened by the further pursuance of the particular phases of aeronautics, the acquisition of control will redound generally to the public good.

POINT I

THE BOARD HAS JURISDICTION OVER THE ACQUISITION HEREIN

The instant case lies within subsection (5) of section 408(a) of the Act. There are three elements of jurisdiction under this subsection: there must be an acquisition of control; that control must be of an air carrier; and the acquirer must be "person engaged in any other phase of aeronautics" or an air carrier, person controlling an air carrier or common carrier. The first of these jurisdictional facts—acquisition of control—has been stipulated herein, and proof was hardly necessary of the second fact, that TWA, the control of which was acquired, is an air carrier. Upon examination and reflection, the third essential element, that Hughes Tool, the acquirer, be a "person engaged in any other phase of aeronautics", within the meaning of the Act, also stands out clearly in relief, but sufficient doubt has, at some time, been voiced about this point to warrant a brief discussion.

By phrasing its application so as to request the Board's approval, "If such approval is deemed necessary", the applicant herein saw fit to question the Board's jurisdiction upon the very institution of the proceeding. The question was never followed up by any showing or even by any formal argument, and the applicant cannot now be regarded as seriously challenging the Board's jurisdiction in the premises.

The expression of doubt was picked up by the Examiner, who stated in his Prehearing Conference Report that one main issue in the case was whether under the law the acquisition requires approval, and that a subordinate question to this issue was "whether at the time of acquisition of control the Hughes Tool Company was engaged in any other phase of aeronautics and if not, what the effect of subsequent engagement in such activities has in law." Again the question was not pursued later other than by the mere recitation upon the opening of the hearing of the indication of doubt set forth in the application (Tr. p. 2).

Contrary to these expressions of doubt, the development of the evidence herein has demonstrated the existence of two distinct and solid bases for jurisdiction herein. First,

it is apparent that Hughes Tool was engaged in one or more phases of aeronautics prior to and at the time of its acquisition of control of TWA. Secondly, it is clear that

[fol. 4491] Hughes Tool, having acquired control of TWA, is now engaged in several phases of aeronautics, and the concurrence of these factors fulfills the requirements of jurisdiction no matter what the chronological sequence of events has been.

To explore the second jurisdictional ground first, it may be conceded that Hughes Tool purchased a controlling stock interest in TWA some time before it undertook, or even contemplated undertaking, the aeronautical activities now conducted by it in the Aircraft Strut, Dickson Gun, St. Andrews, Armament and Culver City plants. For the purposes of this portion of the discussion only, it may further be assumed and conceded that Hughes Tool has not engaged in any phase of aeronautics other than through the enterprises just named. It would thus appear that at the time Hughes Tool acquired, in a physical sense, control of TWA, the company was not at that moment a "person engaged in any other phase of aeronautics". This does not mean, however, that the transaction lies beyond the jurisdiction of the Board for all time. On the contrary, when, at a later date, Hughes Tool launched out as a manufacturer of aircraft and aircraft parts, and became, by reason of such new activities, a "person engaged in any other phase of aeronautics", then and at that time, control of the carrier was acquired, in a legal sense, within the meaning of the Act.

To adopt any other interpretation of section 408 of the Act would be to invite wholesale evasion of a regulatory authority deemed essential by the Congress, or to leave the incidence of the Board's jurisdiction in acquisition cases dependent upon the vagaries of historical sequence. The situation which Congress sought to subject to regulation by the Board was the union in one legal person of control of an air carrier and engagement in other aeronautical pursuits, a situation fraught with danger to the public through possible conflicts of interest or undesirable combinations of forces. In such a situation, the historical order

of the jurisdictional components is no talisman. By physical law the occurrence of one of the two factors—control of the carrier or other engagement in aeronautics—must of necessity happen before the other, but it was the ensuing condition of co-existence which required legal regulation, and it cannot be presumed that Congress meant to apply governmental controls only when the two jurisdictional events should happen in one of the two possible sequences and to abandon to unregulation the same situation of co-existence of carrier control and engagement in other phases of aeronautics whenever, by design or sheer happenstance, the two jurisdictional elements should come into being in the reverse order.

The instant case is analogous to, if not controlled by, the case of *Pan American Airways Company v. Civil Aeronautics Board*, 121 Fed. (2d) 810 (C.C.A. 2d 1941). In that case the Board had dismissed, for lack of jurisdiction, an application by American Export Airlines, Inc., (referred to in the Court's opinion as "Export") for approval under section 408, if approval were deemed necessary, of control of Export by American Export Lines, a steamship company. In reversing the Board's order, the Circuit Court of Appeals rejected the contention that the acquisition was not subject to the Board's jurisdiction because the subsidiary had not yet become an air carrier at the time control

[fol. 4492] of it was acquired by the surface carrier. On this point the Court said, at p. 815:

> "American Export Lines was a common carrier and owned seventy per cent of the stock of Export and the latter proposed to engage in business as an air carrier but was not an air carrier when it filed its application with the Board asking for approval of the control of Export by American Export Lines if such approval were deemed necessary. The Board, with one of its members dissenting, dismissed the application upon the ground that Section 408(a)(5) "applies to cases involving the control of air carriers only where the acquisition of control of a corporate entity occurs at a time when that entity is already an air carrier." This

> **seems to us an unduly literal interpretation of subdivision (5). In our opinion "to acquire control of any air carrier in any manner whatsoever" is to take all steps involved in obtaining control, which in this case would consist in supplying a subsidiary corporation, organized for air carriage and possessing adequate financial resources, with a certificate authorizing operation. Any other interpretation would enable a steamship company, by organizing a subsidiary for air carriage, to escape the requirement of Section 408(b) that the "Authority shall not enter - - - an order of approval unless it finds that the transaction proposed will promote the public interest by enabling such carrier other than an air carrier to use aircraft to public advantage in its operation and will not restrain competition."**

Although upon reason, and upon precedent as established in the *Pan American Airways Company* case, the jurisdiction of the Board would have attached herein as soon after the purchase of stock control or TWA as Hughes Tool entered upon one or another of its aeronautical enterprises, this consideration actually is academic. To return to the first ground of jurisdiction referred to above, the fact is that the Board's jurisdiction was complete when the controlling stock interest was bought. At that time Hughes Tool already was a "person engaged in any other phase of aeronautics" by reason of its activities in respect of the development, manufacture and promotion of Constellation airplanes.

By July 10, 1939, Hughes Tool had for some time been concerned with the development and promotion of new air transport equipment and had formally contracted with Lockheed to purchase nine Constellation aircraft at a total outlay of more than three and one-half million dollars. Under the contract, Hughes Tool was empowered to participate directly in the production of Constellations, first, by supervising the initial manufacture, and second, by the independent production of spare parts. Furthermore, Hughes Tool held and was exercising a vital restrictive control over the wider distribution of the new equipment. In terms of initiative, financial stake and industrial con-

trol, Hughes Tool already occupied an important position in the air transport field. It is axiomatic that this active, direct and far-reaching participation in commercial aviation rendered Hughes Tool, at least by July 10, 1939, a

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[fol. 4493] "person engaged in any other pahse of aeronautics", within the meaning of the Act.

Whereas Hughes Tool had made its first small purchase of TWA's stock shortly before this time, a controlling interest in the air carrier was not acquired until the following year, at the earlist.[10] When that event took place, Hughes Tool was already a "person engaged in any other phase of aeronautics", and consequently the Board's jurisdiction over the acquisition immediately attached, under any interpretation of section 408(a) of the Act.

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[fol. 4494] POINT II

UNRESTRICTED CONTROL OF AN AIR CARRIER BY AN AIRCRAFT MANUFACTURER WOULD BE INCONSISTENT WITH THE PUBLIC INTEREST. The acquisition of which approval is sought herein is that of the control of a transcontinental air carrier by an industrial corporation which is directly engaged in the development, manufacture and sale of commercial passenger and

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[10] The first purchase of TWA capital stock was made by Hughes Tool in March, 1939, in the amount of 600 shares (Ex. 3, p. 7). The growth of Hughes Tool's interest in TWA thereafter is shown as follows, as of December 31 of each year:

Year	Total No. TWA Shares Outstanding	Total No. TWA Shares Held by Hughes Tool	Percentage of Total TWA Stock Held by Hughes Tool
1939	830,846	157,700	18.98
1940	950,000	400,250	42.13
1941	950,582	432,250	45.47
1942	950,995	440,050	46.27
1943	965,173	440,050	45.59

by TWA for the months of December, 1939 through 1943). (See Ex. 2-A; Ex. 3, p. 7; and Forms 2780 filed with the Board

cargo airplanes. This situation of fact may be novel under section 408 of the Act, but the legal principles applicable to its disposition are the familiar rules of policy enunciated by Congress in section 2 of the Act." In the light of these principles, unless approval is to be sharply limited according to the phases of aeronautics in which the acquirer may engage, the acquisition of control is manifestly inconsistent with the public interest, and approval thereof should be denied.

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[fol. 4495] Approval is to be sharply limited according to the phases of aeronautics in which the acquirer may engage, the acquisition of control is manifestly inconsistent with the public interest, and approval thereof should be denied.

The imminent peril to the public welfare which is threatened by the unhampered acquisition of control of a carrier by a manufacturer lurks in the loss of the carrier's inde-

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[20] Sec. 2. "In the exercise and performance of its powers and duties under this Act, the Authority shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity—

(a) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(b) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;

(c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;

(d) Competition to the extent necessary to assure the sound development of an air transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(e) The regulation of air commerce in such manner as to best promote its development and safety; and

(f) The encouragement and development of civil aeronautics."

pendence of judgment in the selection and improvement of equipment. The free exercise of this function by the carrier is a matter of fundamental importance to the public in almost all aspects of air transportation: safety, efficiency, economy of operation and financial integrity of the carrier. It would be equally injurious to the public if a manufacturer were to compel a carrier subsidiary to purchase equipment from it at an exorbitant and non-competitive price, depleting the carrier's funds, or if the manufacturer were to force, through the power of stock control, the purchase of equipment found by the carrier's unbiased technical advisors to be less safe or less adequate for transportation needs than the available equipment of some other manufacturer. So also it would be the loss of the public were the manufacturer to restrain a carrier subsidiary from purchasing improved equipment in order to await improvements of its own construction. To bare a carrier to this influence by unrestrictedly approving its acquisition of control by a manufacturer of, or dealer in, the type of flying equipment which the carrier employs is to subvert the announced purposes of the Act, namely, the regulation of air transportation in such manner as to assure the highest degree of safety and to foster sound economic conditions (Section 2(b)), the promotion of adequate, economical and efficient service by air carriers (Section 2(c)), the regulation of air commerce in such a manner as to best promote its development and safety (Section 2(e)) and the encouragement and development of civil aeronautics (Section 2(f)).

In weighing the practical likelihood of public injury flowing from the union of carrier and manufacturer, it is important to recognize that the best intentions and highest motives are not incompatible with the exercise of this harmful influence. Selfish desire for pecuniary gain is not the only impulse toward interference with the carrier's decisions regarding equipment. The pressure may be applied out of a sincere conviction that the best interests of the carrier are being served, or, perhaps even unconsciously, from an over-enthusiastic pride of achievement. It is to be expected that a designer or manufacturer will be prejudiced in favor of the fruit of his own labors and less able to recog-

nize objectively the relative merits of competing products. A clearer selection is possible for the carrier, whose range of vision is not obscured by the myopia born of creation. To be sure, its choice also is open to error and bias, and the government cannot and should not, in an excess of paternalism, attempt to safeguard the carrier from all possible mistakes of management. But the soundness of this policy offers no excuse for the failure to utilize safeguards provided by law against dangers, which in the light of human experience, are much more highly predictable.

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[fol. 4496] It should be clear from the above exposition that public counsel does not mean to imply any criticism of the management of Hughes Tool, the proposed acquirer herein. There is nothing within the knowledge of public counsel that would impute anything but an impregnable integrity of character and professional skill to Howard Hughes or to those who exercise ministerial guidance over his company. The future welfare of air transportation, however, demands that air carriers be assured, both in practice and in theory, in the use and selection of flying equipment, the maximum freedom of professional judgment reasonably attainable under law, and this basic policy is of such supreme importance in the public interest as to warrant no deviation for passing personalities.

In accordance with this policy, an even more stringent rule was adopted by Congress prior to the passage of the Civil Aeronautics Act of 1938. Under the Air Mail Act of 1934, it was made unlawful for any corporation engaged in any phase of the aviation industry, including the manufacture or sale of airplanes or airplane parts, to acquire or hold any stock interest in a corporation holding an air mail

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[fol. 4497] contract.[21] The policy was one of absolute divorce of air mail carrier and aircraft manufacturer, per-

[21] "Sec. 7. (a) After December 31, 1934, it shall be unlawful for any person holding an air-mail contract to buy, acquire, hold, own, or control, directly or indirectly, any shares of stock or other interest in any other partnership, association, or corporation engaged directly or indirectly in any phase of the aviation industry,

mitting an exception neither for the acquisition of stock where the circumstances might show no conflict of interest likely, nor for the retention of even a small minority interest.

The Civil Aeronautics Act of 1938, which repealed the above-mentioned provisions of the Air Mail Act of 1934, liberalized the restrictions by providing that the Board might approve, and thus legalize, the acquisition of control of an air carrier by a person engaged in any other phase of

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whether so engaged through air transportation of passengers, express, or mail, through the holding of an air-mail contract, or through the manufacture or sale of airplanes, airplane parts, or other materials or accessories generally used in air transportation, and regardless of whether such buying, acquisition, holding, ownership, or control is done directly, or is accomplished indirectly, through an agent, subsidiary, associate, affiliate, or by any other device whatsoever: Provided, That the prohibitions herein contained shall not extend to interests in landing fields, hangars, or other ground facilities necessarily incidental to the performance of the transportation service of such air-mail contractor, nor to shares of stock in corporations whose principal business is the maintenance or operation of such landing fields, hangars, or other ground facilities.

(b) After December 31, 1934, it shall be unlawful (1) for any partnership, association, or corporation, the principal business of which, in purpose or in fact, is the holding of stock in other corporations, or (2) for any partnership, association, or corporation engaged directly or indirectly in any phase of the aviation industry, as specified in subsection (a) of this section, to buy, acquire, hold, own, or control, directly or indirectly, either as specified in such subsection (a) or otherwise, any shares of stock or other interests in any other partnership, association, or corporation which holds an air-mail contract.

(c) No person shall be qualified to enter upon the performance of an air-mail contract, or thereafter to hold an air-mail contract, if at or after the time specified for the commencement of mail transportation under such contract, such person is (or, if a partnership, association, or corporation, has and retains a member, officer, or director that is) a member, officer, director, or stockholder in any other partnership, association, or corporation, whose principal business, in purpose or in fact, is the holding of stock in other corporations, or which is engaged in any phase of the aviation industry, as specified in subsection (a) of this section." Act of June 12, 1934, Chapter 466, 48 Stat. 936.

aeronautics. As may be inferred from its rulings in similar situations under section 409(a) of the Act, dealing with interlocking relationships, the Board has taken this partial relaxation of legislative control to mean simply that where inter-corporate relationships do not appear to the administrative authorities as likely to spawn conflicts of interest potentially injurious to the public, they may be permitted to exist, even though falling within the general proscription of the Act. But, as is further implied by the same decisions, this reasonable provision for exceptions does not alter the fundamental policy that the public must be protected from the encroachment of conflicting private interests upon an air carrier's freedom of judgment and action.

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[fol. 4498] In *Ames-Continental Air Lines, Interlocking Relationship,* 1 C.A.A. 498 (1939), Lawrence C. Ames sought the Board's approval of his serving as a director of both Continental Air Lines and Lockheed Aircraft Corporation. The latter company, of course, was engaged in the manufacture of commercial air transports, as well as other types of aircraft, and it appeared the Continental, the carrier, had for some years utilized Lockheed transport airplanes in its operations. After first pointing out that the Board, "should proceed with caution, within the relatively broad limits of its discretionary power, in granting what amount to exceptions from the statutory prohibition," [22] the Board denied the approval requested, saying, at pages 501-2:

> "However, an interlocking relationship such as is here proposed between an air carrier and a manufacturer of aircraft used or useful in air transportation necessarily involves a potential conflict of interest. Not only is the payment of excessive prices for equipment a hazard potentially involved in the existence of such a relationship, but the freedom of the carrier in choosing the type of equipment best suited to its operations may

[22] As in the case of an acquisition falling within the purview of section 408, interlocking relationships under section 409 are declared to be unlawful unless approved by order of the Board.

be affected. A person common to the boards of directors of air carrier and manufacturer would find it difficult to act to the best interests of both in connection with negotiations by the air carrier relative to the purchase of equipment. These considerations may not be significant to the point of exercising a controlling effect upon the public interest where the purchases potentially affected by the proposed interlocking relationship are relatively small to the air carrier, but they become significant when, as in the present case, major business transactions of the air carrier, and equipment which may be purchased from competing manufacturers, may be involved.

"Proof that the individual applicant did not as a director of the manufacturer influence purchases of aircraft, or that the recommendations of the officers of the company as to purchases of aircraft, or that the recommendations of the officers of the companies as to purchases and sales of aircraft are not ordinarily reviewed or changed by the boards of directors, is not an affirmative showing sufficient to overcome the inherent danger involved in an interlocking relationship of this nature. That no presently existing actual harm or unethical purpose is found is not conclusive. The fact remains that the type of relationship here sought to be created is such as to furnish a medium through which the desirable arms-length relationship between buyer and seller may be materially altered."

The same considerations which guided the Board in the *Amos* case apply herein with even greater force, in that the effective exercise of the unwholesome influence over the carrier by the manufacturer is the more readily attainable and the more probable when the manufacturer is the controlling stockholder in the carrier than merely when the two

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[fol. 4499] corporations have one or more directors in common.

Hughes Tool has been engaged now for several years, directly and indirectly, in the development, manufacture and distribution of aircraft which are, or may be, suitable

for use by TWA in its certificated operations. These activities are substantial and enduring, and have developed both from a scientific interest in aviation and from ordinary motives of commercial advantage. If the company is to continue to pursue and expand its aeronautical interests without some restriction upon its retention of control over TWA, then public counsel strenuously urges that the acquisition of control herein would be seriously adverse to the public interest and approval thereof should be denied.

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[fol. 4500] POINT III

Public Interest Favors Continued Engagement by Hughes Tool in Certain Phases of Aeronautics

Although the engagement by Hughes Tool in some phases of aeronautics while retaining control of TWA would be markedly adverse to the public interest, nevertheless the public interest does favor the continued participation by Hughes Tool in other aeronautical activities. The activities so favored are those which are being carried on in the furtherance of the war effort. They embrace all the plants of Hughes Tool in which the company is presently pursuing any aeronautical endeavors, but cover these plants only in so far as the products thereof are strictly military in nature or intended for use by the government in the prosecution of the war.

The distinction is drawn between the activities which may lead to conflicts of interest harmful to the public and those enterprises immediately beneficial to the public which may not be expected to germinate such conflicts. Thus, it is in the public interest, for example, for Hughes Tool to carry on the work of its Culver City Plant in the development of cargo-carrying flying boats for the government, but it would not be in the public interest for this branch of the company to proceed to expand its operation to the manufacture of such aircraft for use in commercial air transportation following the war.

This distinction also has been relied on by the Board in the parallel interlocking-relationship situations, under section 409(a) of the Act. In *Cohu-Transcontinental & West-*

ern Air, Inc. Interlocking Relationship, 1 C.A.A. 547 (1940), the Board was asked to approve the interlocking relationships of LaMotte T. Cohu as a director of TWA and as both a director and an officer of Northrop Aircraft, Inc., a manufacturer, and Air Investors, Inc., an investment holding company. The Board did approve the interlocking relationships between the carrier and the manufacturer, saying at page 550:

> "In this case, however, we believe that the fact that Northrop intends to engage exclusively in the manufacture and sale of military aircraft removes the possibility of any conflict of interest resulting from an interlocking relationship between T.W.A. and Northrop".

On the other hand, the interlocking relationships between the carrier and the investment firm were disapproved, the Board pointing out the inherent danger that conflicts of interest might arise whose resolution in favor of the investment house might work injury to the carrier and, hence to the public.[23]

ACQUISITION OF CONTROL OF TWA SHOULD BE APPROVED ON CONDITION SUBSEQUENT TERMINATING APPROVAL IN EVENT HUGHES TOOL ENGAGES IN SPECIFIED PHASES OF AERONAUTICS

As the public interest favors the continued participation by Hughes Tool in a number of phases of aeronautics and, on the other hand, bars the company from simultaneously holding control of TWA and engaging in other phases of

[23] See also Order, Serial No. 1250, dated September 17, 1941, approving the interlocking relationships of Ralph S. Damon as president and director of Republic Aviation Corporation, a manufacturer of military aircraft and equipment only, and as vice-president and director of American Airlines, Inc., a carrier.

aeronautics leading to potential conflicts of interest injurious to the public, it would follow that the approval of the acquisition of control should be denied unless adequate assurance can be given that the retention of control will not foreseeably lead to public harm. Public counsel submits that the problem is susceptible of solution in this manner, and that the establishment of certain simple safeguards may render the acquisition of control no longer inconsistent with the public interest.

These vital safeguards may be supplied in the form of a condition to the granting of approval. The condition must be sufficiently rigid and comprehensive to provide ample protection for the carrier and the public, without placing an undue burden upon the instrumentalities of the public for its effective operation, and yet may be so defined in scope as to leave to the applicant considerable freedom not only for continued cooperative effort in the interests of national defense but also for the exercise of private initiative in the development of industrial aeronautics.

The necessity and propriety of imposing a condition to any approval herein were recognized and accepted by both the applicant and intervenor at the time of the hearing. The specific conditions suggested by the two parties were, however, widely divergent in scope and nature, and, in the view of public counsel, neither solution proffered is a satisfactory one.

In a statement upon the record after the receipt of evidence, the attorney for the Department of Justice formally recommended that in the event the acquisition should be approved by the Board, the order of approval should provide for complete re-adjudication of the issues at any time that Hughes Tool should commence the manufacture of aircraft or aircraft parts for commercial use.[24] In reply to this rec-

[24] "In view of the above circumstances, the Department of Justice respectfully recommends that, should an order be entered approving the acquisition by Hughes Tool Company of control of TWA, such an order should condition approval upon the fact that Hughes Tool Company is not now engaged in the manufacture of aircraft or aircraft parts for commercial use. The Department further recommends that the Civil Aeronautics Board retain juris-

[fol. 4502] ommendation, counsel for TWA countered with the proposal that the acquisition be approved on the condition that if TWA should desire in the future to purchase commercial aircraft or aircraft parts manufactured by Hughes Tool, TWA should be required to apply to the Board for approval of that purchase.[25]

The condition recommended by the attorney for the Department of Justice is far too broad in that it would hamper the applicant in possible engagement in various phases of

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diction of the matter for the purpose of reconsidering the question should Hughes Tool Company, at any time, commence manufacture of aircraft or aircraft parts for commercial use." (Tr. p. 18)

[25] "The final point I wish to touch upon is the recommendation by the Department of Justice that CAB's approval should be conditioned on further activity of Hughes Tool Company in the manufacture of aircraft.

There is no objection on the part of Hughes Tool Company to some such arrangement. I am not certain that the arrangement that is suggested by the Department of Justice is the ideal one.

I think perhaps preferably if the Board's approval would take this form it would be more satisfactory, and that is, that approval be granted on the condition that if Hughes Tool Company should commence the manufacture of aircraft, or aircraft parts, for commercial use and if TWA should desire to acquire such aircraft, or aircraft parts, then TWA should come back to the Board and ask approval.

"Examiner Law: You mean ask approval of the purchase?

Mr. Spater: Ask approval of the purchase or of the relationship.

Examiner Law: You mean submit it to the Board in the form of an agreement for approval under Section 412?

Mr. Spater: Some such action.

There is no objection to having to come back to the Board if such an event should take place. It doesn't appear that is a very likely thing at the present time, but I don't think the restriction that is suggested by the Department of Justice is mechanically good because if they commence the manufacture of aircraft for commercial use, it might be nuts or bolts which might be sold to K.L.M. somewhere, I don't know, and the requirement of coming in again and having a hearing when that takes place it seems to me would be an onerous burden, but we have no objection to coming in if TWA becomes interested, and I should think that would be the only ground on which any objection would exist." (Tr. pp. 21-22)

aeronautics in which no conflict of interest involving TWA might arise. On the other hand, it is too narrow in that it treats only of manufacture, and remains silent as to selling activities or as to some form of participation in production short of manufacture. In this regard, the proposed solution seems to ignore Hughes Tool's connection with the development, production, distribution and ownership of Constellation equipment. Finally, the procedure proposed is undesirable, as the implications of the acquisition of control have now been fully developed, and the need, from a regulatory standpoint, is for a delineation of permissive areas of operation rather than for provisions for successive reviews of the same issues by the Board.

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[fol. 4503] The counter-proposal made by counsel for TWA is open to the same objection regarding procedure and also to the fundamental objection that it would not protect the public from potential abuses of stock control. It is imposing far too great a burden upon the Board to ask it to pass upon the wisdom and propriety, in both a technical and business way, of every bargain made by a carrier for the purchase of equipment from a particular manufacturer. The public ought not be made to rely for its safety and economic welfare upon so high a degree of vigilance and omniscience on the part of any governmental body. The kind of safeguard which the situation demands is one which prevents the application of a harmful influence, and not one which gives free rein to such influence, subject only to the Board's prompt detection of the true effect of the action taken.

As was emphasized by the Board in the interlocking relationship cases cited *supra*, there are certain spheres of activity in which a person controlling an air carrier may engage safely, so far as the public is concerned, and other spheres in which his engagement would threaten danger to the public. The line of demarcation lies between those spheres of activity in which it is reasonably foreseeable that conflicts of interest may arise which will result in harm to the public and those spheres of activity in which the occurrence of such conflicts appear improbable. The fixing of this line of demarcation herein would provide the simplest

and most effective safeguard for the public interest. The boundary may be established by setting forth in the order approving the acquisition a condition subsequent providing for the immediate termination of the approval granted in the event that the acquirer should enter upon or pursue activity in those described phases of aeronautics in which conflicts of interest potentially harmful to the public appear likely to arise. Any trespass over this line of demarcation would automatically render the retention of control of the carrier unlawful as being, under the circumstances, without the approval of the Board.

In line with these conclusions, public counsel respectfully recommends that the Board approve the acquisition of control of TWA by Hughes Tool upon the following terms:

> "Provided, however, that the approval herein granted shall terminate immediately in the event that Hughes Tool Company and Howard R. Hughes (so long as he retains control of Hughes Tool Company), or either of them, shall engage in any way, directly or indirectly, in the manufacture, production or disposition (by sale, lease or otherwise) of aircraft or aircraft parts for use in interstate, overseas or foreign air transportation (as presently defined in section 1 (21) of the Act); but the aforesaid condition to the granting of approval herein shall not apply to any participation by the said Howard R. Hughes as an aeronautical engineer in the development or design of aircraft or aircraft parts, provided, however, that no compensation for such participation by the said Howard R. Hughes be paid by Transcontinental & Western Air, Inc., or by any subsidiary or affiliate thereof, and provided

> [fol. 4504] further, that the said Howard R. Hughes shall not attempt, directly or indirectly, to influence the decision of Transcontinental & Western Air, Inc., or of any subsidiary or affiliate thereof, or of any director, officer, consultant or employee of the said Transcontinental & Western Air, Inc., or of any said subsidiary or affiliate thereof, with regard to the purchase, acceptance or use by the said Transcontinental & Western

Air, Inc., or by any said subsidiary or affiliate thereof, of any aircraft or aircraft parts in the development or design of which the said Howard R. Hughes may have participated to a substantial degree.

The above-recited condition, insofar as it relates to the disposition of aircraft, shall not apply to the twenty-five Lockheed 'Constellation' airplanes as to which Hughes Tool Company presently holds rights of purchase from the United States government through Transcontinental & Western Air, Inc.

The approval herein granted recognizes Hughes Tool Company as a 'person engaged in any other phase of aeronautics', within the meaning of section 408(a)(5) of the Act, and said approval shall not be deemed to constitute approval of the acquisition of control of Transcontinental & Western Air, Inc., by Hughes Tool Company as a common carrier, air carrier or person controlling an air carrier, or as a person engaged in any phase of aeronautics other than the manufacture, production or disposition (by sale, lease or otherwise) of aircraft or aircraft parts and any activity incidental thereto.

The phrase 'aircraft parts', as employed hereinabove, means unassembled, assembled or dismantled hulls, engines, propellers, radios, fuselages, wings, tail units, undercarriage units, equipment, accessories and spare parts of or for aircraft."

The terms of approval above set forth prohibit Hughes Tool and Howard Hughes, as controlling Hughes Tool, from retaining control of TWA while engaging in those phases of aeronautics in which conflicts of interest involving TWA are most likely to arise. As the condition operates to revoke entirely the administrative authority requisite to render retention of control of the carrier lawful, the restricted areas have been held to a minimum, and the condition leaves a vast field of aeronautical expansion open to Hughes Tool without invoking the consequences of the condition. It must be remembered that Hughes Tool is primarily a manufacturer of oil field equipment. The proposed condition would permit Hughes Tool, while yet reserving

stock control of TWA, to continue to manufacture military aircraft and to engage, if it desires, in the manufacture of aircraft or aircraft parts for sport and private flying, or for commercial uses other than in interstate, overseas or foreign air transportation, as defined in the Act.

The proposed condition also takes cognizance of TWA's desire to benefit from Howard Hughes' professional skill and counsel as an aeronautical engineer. By exception to the general condition terminating the life of the approval

—27—

[fol. 4505] granted, Hughes himself would be permitted to perform services as an aeronautical engineer with respect to transport equipment. The safeguards for the protection of TWA and the public are attached to this special authority: if substantial services of that kind are performed by Hughes, first, that they shall not be compensated for by TWA; and second, that Hughes shall not add to them the role of an advocate. As to the first qualification, it is to be noted that any benefits to TWA will redound without special compensation to the benefit of Howard Hughes as sole stockholder of Hughes Tool, which, in turn, is the largest stockholder of TWA. The second qualification looks to the danger noted under Point II, *supra*, of a purchaser sitting in judgment on the product of his own hands.

Public counsel urges that these terms of approval afford the minimum of protection which the public interest requires if Hughes Tool is to retain control of TWA. Without such safeguards, it is submitted, the Board should deny its assent to the acquisition. With them, however, the acquisition of control may be found to be consistent with the public interest and, accordingly, entitled to approval.

Conclusion

Public counsel respectfully submits that approval of the acquisition of control herein should be granted, only, however, upon the terms and conditions hereinabove set forth.

/s/ Louis W. Goodkind
Louis W. Goodkind
Public Counsel

[fol. 4506] CERTIFICATE OF SERVICE

I hereby certify that I have this day served the attached brief upon all parties appearing of record in this proceeding by mailing to each said party a copy of said brief in a properly addressed, franked envelope.

/s/ LOUIS W. GOODKIND
Louis W. Goodkind
Public Counsel

Washington, D. C.
April 22, 1944

[fol. 4507]

O. K. for release
F. A. LAW, JR.

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

DOCKET No. 1182

Application for approval of acquisition of control under section 408 of the Civil Aeronautics Act of 1938, as amended.

HUGHES TOOL COMPANY CONTROL OF TWA

REPORT OF F. A. LAW, JR. EXAMINER

Served: July 12, 1944

Upon:

George A. Spater for Hughes Tool Company
Sadie B. Arbuthnot for the Department of Justice
Louis W. Goodkind, Public Counsel.

Exceptions, if any, must be filed with the Secretary, Civil Aeronautics Board, Washington, D. C., and served upon all other parties within 10 days of the date of service shown above. Briefs may be filed and served on all other parties within 15 days after the date fixed for filing exceptions.

[fol. 4508]

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

DOCKET NO. 1182

HUGHES TOOL COMPANY CONTROL OF TWA

Approval recommended of the acquisition of control by Hughes Tool Company of Transcontinental and Western Air, Inc., under section 408 of the Civil Aeronautics Act of 1938, as amended, subject to certain conditions.

Appearances:

George A. Spater for Hughes Tool Company

Sadie B. Arbuthnot for the Department of Justice

Louis W. Goodkind, Public Counsel.

REPORT OF F. A. LAW, JR., EXAMINER

Hughes Tool Company, an industrial corporation, by application duly filed, seeks approval by the Board "if such approval is deemed necessary" under section 408 of the Civil Aeronautics Act of 1938, as amended, of the acquisition by it of control through stock ownership of Transcontinental and Western Air, Inc., hereinafter called TWA, an air carrier within the meaning of section 1(2) of the Act. After notice, hearing was held and briefs have been filed. The Department of Justice was authorized to intervene.

Under section 408(a)(5) it is unlawful unless approved by the Board, for any air carrier or person controlling an air carrier, any other common carrier or any person engaged in any other phase of aeronautics, to acquire control of any air carrier in any manner whatsoever. By the language of section 408(b) the Board is required to grant such approval subject to such reasonable terms and conditions as are required in the circumstances unless it is found that the acquisition will not be consistent with the public interest.

Hughes Tool is a Delaware Corporation, all the stock of which is owned by Howard R. Hughes. Its principal business, located at Houston, Tex., is and has been the manufacture of rock bits, tool joints, and high pressure valves for the oil well drilling industry. The company is a family enterprise, founded by the father of the present owner, who was engaged in the oil industry. In its own field Hughes [fol. 4509] Tool has been and is highly successful. As of November 30, 1943, its capital and earned surplus aggregated nearly $21,500,000. Its current assets aggregated more than $22,000,000 against current liabilities of approximately $10,770,000.

Howard R. Hughes is a well known aviator and aeronautical engineer who until recent years was interested in aeronautics principally, if not wholly, as a hobby. As an aviator he has been the winner of various trophies and is the holder of various speed records. As an aeronautical engineer he has designed or collaborated in the design and alteration of aircraft for speed tests and more lately for air transport.

Hughes Tool first became interested in TWA at the solicitation of the president of TWA, a personal friend of Howard R. Hughes. In March 1939, the first purchase of stock, amounting to 600 shares, was made. By the end of that year, Hughes Tool was the owner of 157,700 shares of common stock of TWA. This amount had grown to more than 400,000 shares, or 42.1 percent of the then outstanding total at the end of 1940. At the end of 1942 Hughes Tool owned 440,050 shares or 45.6 percent of a total of 965,173 shares outstanding. All of this stock except 119,154 shares purchased on March 2, 1940, directly from the TWA treasury, was acquired through open market or brokerage transactions. The total investment of Hughes Tool in the stock of TWA is approximately $5,505,000.

For the purpose of this proceeding applicant has stipulated that the stock now owned constitutes control of the carrier, but for practical purposes such control has existed since the end of 1940 at least, and the Hughes influence, had it been exercised, might have been effectively felt in 1939 when the ownership as stated reached 157,700 shares. Aside from the stipulation of counsel, very little discussion is re-

quired to demonstrate that control exists and has existed since 1940. Such a proportion of the outstanding stock as that then owned, when solidly held and consistently voted, represents such a dominating influence in the affairs of a corporation that control, either affirmative or negative, must follow. Much smaller interests have been found so to do.[1]

No individual holds or has held office in both Hughes Tool and TWA, except for the employment in an advisory capacity by Hughes Tool of the president of TWA, Mr. Jack Frye.

Prior to 1939 the only activity of Hughes or of Hughes Tool associated with any phase of the aircraft industry was experimental and development work upon the privately owned and operated equipment of Mr. Hughes or the company. No commercial activities of any character existed. The first activity of Mr. Hughes in any phase of commercial [fol. 4510] aeronautics followed the acquisition of an interest in TWA. In the late spring and early summer of 1939, Messrs. Hughes and Frye collaborated in the design of a 4-motored airplane developed for use by TWA in commercial air transportation. They began negotiations with several aircraft manufacturing concerns regarding construction, resulting in an agreement between Hughes Tool and Lockheed Aircraft Corporation on June 30, 1939, before control of TWA by Hughes Tool was obtained for the construction and delivery of five airplanes to be known as "Ex-Calibur-A". The name later was changed to Constellation and will be referred to hereinafter as such.

This contract restricted the manufacture and sale of the Constellation type aircraft to others than Hughes Tool or TWA. It was later modified to authorize their sale to the Governments of the United States and Great Britain, to Pan American Airways, Inc., and to Koninklijke Luchtvaart Maatschappij, known as "KLM", and the number to be purchased by Hughes Tool was increased to a total of 40. In 1941 the board of directors of TWA authorized the air carrier to accept assignment of the Hughes-Lockheed agree-

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[1] *Rochester Telephone Company* vs. *U.S.*, 307 U.S. 125, 145 (1939).

ment, and in 1942 Hughes Tool, with the approval of Lockheed assigned to TWA all of its right, title, and interest therein. Under the agreement, TWA is to purchase 15 aircraft and Hughes Tool 25, the latter being purchasable under an option through TWA. The option to purchase the 25 is subject to cancellation upon appropriate notice. At the present time all of the Constellation type aircraft built are deliverable for military use subject to an option to reacquire a total of 40 by repurchase from the Government. Restrictions against the manufacturer which would prevent the sale of Constellation type aircraft for domestic air transport use except by TWA continues under existing contracts. When made, the Constellation agreements were for the benefit, and at the request of TWA, and to evidence TWA's interest, it was given the option to be substituted for Hughes Tool as the direct contracting party. The obvious, if not the expressed, purpose of these arrangements was to give TWA the benefit of the credit and financial standing of Hughes Tool in a transaction involving substantial financial responsibility. As to the 25 airplanes subject to the option of Hughes Tool, the record indicates that these, if the option is exercised, will be held for resale and for experimental use. Should applicant not exercise its option, it is still party to contracts restricting distribution of the aircraft even by resale, so as to prevent their use in domestic air service except by TWA.

In addition to its interest in the purchase and sale of Constellation type aircraft, Hughes Tool in 1942 began production as a subcontractor of aircraft parts for use in aircraft built as weapons for or transport by the United States military forces. Since that beginning, either directly or through subsidiary or affiliated companies, applicant has expanded and diversified its production activities in furtherance of the war effort. There is no evidence, however, of an intention to continue the manufacture of aircraft or aircraft parts or to otherwise engage in a phase of aeronautics on a commercial basis after the war. There is evidence to indicate only that Hughes Tool may continue developmental and experimental work in aviation.

[fol. 4511] Jurisdiction of the Board in the proceeding is questioned by the application when it asks approval "if such

approval is deemed necessary". Under the section of the Act involved, there are three elements of jurisdiction: (1) there must be an acquisition of control; (2) the party sought to be controlled must be an air carrier; and (3) the acquirer must be engaged in a phase of aeronautics. As to the first two there is no doubt. There has been an acquisition of control, and TWA is an air carrier. As to none was any serious objection to the Board's jurisdiction interposed during the course of the proceeding subsequent to the filing of the application. As the case has proceeded, it has become quite clear that neither the applicant nor TWA oppose assumption of jurisdiction by the Board and the making of statutory finding required by the Act. The pertinent question is whether Hughes Tool is engaged in a phase of aeronautics as contemplated by section 408 of the Act. Particularly significant in this regard is the fact that Hughes Tool is at present obligated to purchase a substantial fleet of aircraft, at least a part of which may be held for resale for commercial airline operation. It thus may under its contracts, if it has not already, become a dealer in such equipment and thus engaged in a phase of aeronautics, which renders unlawful the acquisition of control of the air carrier without the consent of the Board. While some basis for reasonable doubt in the mind of the applicant may have existed at the time control of TWA was obtained, the fact that applicant is authorized to become a dealer in second hand air transport equipment supports jurisdiction of the Board herein as urged by Public Counsel. The consummation of its plan is not essential to this conclusion.[2]

Under the present and contemplated operations of Hughes Tool no adverse effect upon the public interest can be foreseen. Applicant is not now engaged in and has no plans contemplating production of aircraft, aircraft parts, or facilities for use in commercial air transportation. So far as the possibility of TWA acquiring from the applicant aircraft which the applicant is obligated to purchase under existing agreements is concerned, the price is firmly estab-

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[2] *Pan American Airways Co.* v. *Civil Aeronautics Board,* 121 Fed. (2) 810 (1941).

lished so as not to exceed costs, and in view of what might be referred to as the paternalistic attitude of Hughes Tool up to the present, the likelihood that TWA might be forced to purchase more than the economic operations of TWA require is remote, but such a possibility exists. That no presently existing harm or unethical purpose is apparent is not conclusive as to the future. However, the possibility of wrong doing is no basis for the interruption of a relationship which has not proven harmful, but on the contrary has been and may continue to prove helpful to the air carrier. Remembering that the interest of applicant in the air carrier had its inception in an effort to be helpful in the consummation of plans conceived and initiated by the air carrier itself, it is not inconsistent with the public interest that the relationship continue, but because of the possibilities resting therein, it is proper that the Board in observance of the obligations imposed upon it by the Act insure against any temptation which may later come to the applicant to take advantage of the relationship to its own profit and to the detriment of the public interest by granting its [fol. 4512] approval subject to such reasonable conditions as will enable it in the future to adequately protect the public interest.

The Department of Justice urges that the restraint which has been placed upon the sale of Constellation type of aircraft for use in domestic air service, together with other facts in the case, be especially considered by the Board in determining the nature and scope of any order which may be entered. It urges further that the Board's approval, if granted be bottomed upon the fact that Hughes Tool is not now engaged in the manufacture of aircraft or aircraft parts for commercial use, and suggests that the Board reserve jurisdiction in the proceeding for the purpose of reconsideration in the event that this condition change in the future. Applicant in response asserts that the restraint referred to would exist whether or not Hughes Tool has control and, contending that the Constellation type of aircraft is primarily an engineering development of and for TWA, believes the restraint is usual, appropriate and reasonable. As an alternative it suggests that if any condition is attached to the Board's approval, applicant be required

to return for further consideration only if Hughes Tool enters commercial production of aircraft or aircraft parts and TWA undertakes to purchase them.

On brief Public Counsel recommends that the Board approve the acquisition of control herein upon elaborate conditions. He would provide that the approval terminate in the event that either Hughes Tool or Howard R. Hughes engage directly or indirectly in the production or disposition of aircraft or aircraft parts for use in interstate, overseas or foreign air transportation, excepting from this condition, however, the 25 Lockheed Constellation airplanes as to which Hughes Tool now holds the right of repurchase from the United States through TWA. He would also provide that no compensation shall be paid to Hughes by TWA for any participation by him as aeronautical engineer in the development or design of aircraft or aircraft parts; and that Hughes shall not attempt directly or indirectly to influence the air carrier in its decision to purchase aircraft or aircraft parts in the development or design of which Hughes may have participated to a substantial degree. The apparent intent of the condition is to restrain Hughes or Hughes Tool directly, or by indirection through any associate or affiliate from engaging in any manner in the manufacture, production, or disposition of any item of property which goes or might go into the creation of aircraft susceptible of use for commercial air transport. On pain of forfeiture of the Board's approval subjecting applicant to the penalties of the Act, the condition as proposed conceivably could stifle research and development work even of the character of that which Hughes Tool has heretofore performed. Considering that the applicant took immediate exception to the proposal of the Department of Justice as being too restrictive, it is reasonable to assume that he would as vigorously oppose the condition proposed by Public Counsel as unnecessarily harsh.

[fol. 4513] It would hardly be consistent with the public interest for TWA to be prevented from taking reasonably limited advantage of the benefits which might result from the research and development work of the controlling industry, if that corporation should at some future time undertake to manufacture articles useful in commercial air transportation. Applicant suggests that any condition at-

tached by the Board to its approval provide that if Hughes Tool Company should commence the manufacture of aircraft or aircraft parts suitable for commercial use and that if TWA should desire to acquire such aircraft or aircraft parts, then TWA and Hughes Tool should be required to return to the Board for further hearing upon continuation of the relations between TWA and Hughes Tool. It insists that such a condition would permit applicant to know exactly where it stands and yet provide all the protection of the public interest contemplated by section 408 in the case of relationships between the manufacturer and an air carrier.

Mr. Hughes is an acknowledged expert in some phases of aviation. Unreasonable restrictions might, and probably would, result in depriving the air carrier of the benefit of his advice. It is possible that the experimental and development work of the applicant in its behalf or in behalf of Mr. Hughes himself, if continued, may result in the development, and possibly manufacture of one or more parts of aircraft of major benefit not only to the applicant but to the entire air transport industry. Such a possibility should not be prevented by placing in jeopardy the large investment made in the air carrier. The object of any condition to the continued control of TWA by the air carrier inserted at this time in the authority granted by the Board should be to protect the public interest from infringement by any attempt either to give TWA an unfair competitive advantage or to subject it to unreasonable demands through the influence of the controlling industry. This can be accomplished by a reasonable limit upon commercial transactions between the acquirer and the acquired which may be had without further consideration in this proceeding by the Board.

It is recommended that the Board find that control of Transcontinental & Western Air, Inc., by Hughes Tool Company is not inconsistent with the public interest so long as commercial transactions between them or between TWA and any affiliate or subsidiary of Hughes Tool is limited to aircraft parts or accessories, the complete item price of which does not exceed $25 each, with the further limitation that the total annual expenditure therefor by either party shall not exceed $10,000. It should be provided further that

the Board shall retain jurisdiction in this proceeding to take appropriate action, upon breach of this condition or upon petition for waiver thereof in any manner whatsoever, and that the restriction shall not affect the existing contractual right of applicant to reacquire Constellation aircraft through TWA.

[fol. 4538]

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

EXHIBIT B-9 TO AFFIDAVIT OF CHESTER C. DAVIS

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

DOCKET No. 2796.

TWA-HUGHES TOOL COMPANY INVESTIGATION

REPORT OF PREHEARING CONFERENCE

Served: May 12, 1947

Upon:

Thomas A. Slack for Hughes Tool Company

Gerald B. Brophy for Transcontinental & Western Air, Inc.

James L. Highsaw, Jr., Public Counsel.

Exceptions, if any, to matters contained in this report must be filed with Examiner Edward T. Stodola and served on all other counsel within 5 days from the date of service shown above.

[fol. 4539]

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

DOCKET No. 2796

TWA-HUGHES TOOL COMPANY INVESTIGATION

In the matter of transactions between Hughes Tool Company and Transcontinental & Western Air, Inc., and related matters.

REPORT OF PREHEARING CONFERENCE HELD APRIL 17, 1947

Presiding:

Edward T. Stodola, Examiner

Pursuant to notice, a Prehearing Conference was held on April 17, 1947, at 10:00 a.m., in Room 1302, Temporary "T" Building, 14th St., and Constitution Ave., N.W., Washington, D. C. The following persons were present:

Palmer Bradley and *Thomas A. Slack* (Andrews, Kurth, Campbell & Bradley) for Hughes Tool Company.

Gerald B. Brophy (Chadbourne, Wallace, Parke & Whiteside) and *C. E. Fleming* for Transcontinental & Western Air, Inc.

Daniel J. Buckley for the Operations Division of the Economic Bureau, Civil Aeronautics Board.

James L. Highsaw, Jr., Gabriel J. Batavia and *William F. Kennedy,* Public Counsel.

The Board, in Docket No. 1182,[1] by order dated October 17, 1944 approved the acquisition by Hughes Tool Com-

[1] *Transcontinental & W. A., Control by Hughes Tool,* 6 C.A.B. 153 (1944).

pany of control of Transcontinental & Western Air, Inc. through stock ownership therein, subject to certain conditions set forth in said order as amended by Order Serial No. 4437, dated January 26, 1946.

[fol. 4540] By letter dated January 10, 1947 Hughes Tool Co. transmitted to the Board a copy of a letter-agreement between that company and TWA, dated January 8, 1947, and accepted by the Board of Directors of TWA on January 9, 1947. This letter-agreement involves a financing program for TWA and provides, among other things: (a) For a loan by Hughes Tool to TWA and the issuance to Hughes Tool of notes for such loan with an option to convert said notes into common stock of TWA; and (b) For the reconstitution, upon the occurrence of certain events, of the Board of Directors of TWA, so that a majority thereof will be nominees of Hughes Tool. In said letter of January 10 Hughes Tool made application for Board approval of said loan and for approval of any other provision of the agreement under the terms of the order dated October 17, 1944, as amended, if such approval were deemed necessary.[2] TWA joined in this application. The Board, by letter dated January 22, 1947, advised Hughes Tool and TWA that neither the loan from Hughes Tool to TWA provided for in said letter-agreement nor any other provision of said agreement of January 8 constituted the kind of commercial transaction intended to be governed by the conditions imposed in the Board's order of October 17, 1944, as amended. The Board further stated, however, that nothing in its letter was to be construed as a determination that approval by the Board of the letter-agreement pursuant to the provisions of section 408 of the Civil Aeronautics Act is not required.

On February 7, 1947, the Board, acting on its own initiative, issued an order instituting subject proceeding,[3] making both Hughes Tool and TWA parties thereto. The [fol. 4541] Board stated that as a consequence of, or in

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[2] No application was made for approval under any of the provisions of section 408 of the Act.

[3] Order Serial No. E-289.

connection with, the letter-agreement transaction referred to above, there may have been or may be such a change in the character or extent of the control of Hughes Tool or TWA as to constitute an acquisition of control requiring approval under section 408 of the Act. Said order of February 7, 1947 sets forth the following as the purposes of the investigation:

> (1) Determining whether the letter-agreement of January 8, 1947 between Hughes Tool and TWA, accepted by the Board of Directors of TWA on January 9, 1947, or any arrangement or action related thereto, or change in the activities of Hughes Tool in the field of aeronautics since October 17, 1944, has resulted or will result in an acquisition of control of TWA for which Board approval is required pursuant to section 408 of the Civil Aeronautics Act of 1938, as amended;
>
> (2) Determining whether such acquisition of control, if any, is consistent with the public interest and fulfills the conditions of said section 408; and
>
> (3) Entering any such order or taking any such further action herein as may be appropriate pursuant to the provisions of the Civil Aeronautics Act of 1938, as amended.

At the Conference, Public Counsel submitted a tentative statement of issues and certain evidence requests of Hughes Tool and TWA. As a tentative statement of issues Public Counsel enumerated the three purposes of the investigation contained in the Board's order of February 7, 1947 and quoted above. The evidence requests of Public Counsel are attached hereto as Appendix A, herein numbered under Pages 1 through 4, inclusive. Both Counsel for Hughes Tool Co. and TWA agreed to proceed to discuss the matter of issues and of proof on the basis of the proposals submitted by Public Counsel.

[fol. 4542] It was the view of Public Counsel that all the evidence requested (as indicated by the requests for evidence set forth in Appendix A) is both relevant and material to the Board's Order of Investigation dated Feb-

ruary 7, 1947. They took the position that the issue as to whether any additional acquisition of control is in the public interest, raised by paragraph 2 of the investigation's purposes enumerated above, depends upon an application of the principles of section 2 of the Act to the factual evidence relating to Hughes Tool Company's exercise of control subsequent to the approval of control of October 17, 1944, and that the evidence requested is clearly relevant to such a determination. In addition, it is their position that determination of the extent, if any, of additional control and of any change in character of such control is in part dependent upon evidence concerning exercise of past control.

In opposition to the position of Public Counsel, Counsel for the parties, Hughes Tool Co. and TWA, took two alternative views at the Conference. It was their first contention that once control has been acquired and approved by the Board there can be no additional acquisition of control within the meaning of the Act. Secondly, it was their view that under section 408 the Board can look only to such conflict as may exist between the phase of aeronautics in which the person controlling the air carrier is engaged and the activities of the air carrier itself.

Counsel for both Hughes Tool Co. and TWA took the further position that if this proceeding is to involve an inquiry into matters upon which Public Counsel seeks testimony from the four witnesses they have requested, as shown on Pages 1 and 2 of Appendix A, then there was apparently no limit to the scope of the investigation. It may conceivably mean, they insist, that the Board will undertake to question the wisdom of TWA policy on mat- [fol. 4543] ters which are more properly ones of managerial discretion. They contend that the issues raised by the letter-agreement of January 8 afford no warrant for such an investigation.

Counsel for Hughes Tool attacked the Board's order as lacking in specificity in that it fails to confine the scope of the proceeding to the fundamental issue of whether such phase of aeronautics as the Hughes Tool Co. may be engaged in is not inconsistent with or adverse to the opera-

tion of TWA as an air carrier. He expressed concern that the Order of Investigation as now phrased lacks a limit on the type of decree the Board might enter in this case. After protesting the extent of the inquiry planned by Public Counsel, Counsel for both Hughes Tool Co. and TWA urged reconsideration of the contemplated scope of the investigation, with a view to definitely limiting it to an inquiry into such conflict as may possibly exist between the aeronautical activities of Hughes Tool Co. and its control of TWA as an air carrier.

The basic purpose of this proceeding is to determine whether the arrangements evidenced by the aforementioned letter-agreement, and actions taken or which may be taken pursuant thereto, have resulted or may result in such a change in the character or extent of the control of Hughes Tool Co. over TWA as to constitute an acquisition of control requiring approval under section 408 of the Act, and to determine further, what action, if any, may be appropriate in the premises. To a determination whether and to what extent there has been a change in the character of control over TWA by Hughes Tool Co. it is obviously necessary to make inquiry into matters of past control and past management. And whether such additional or changed control as the record may reveal, if any, is not inconsistent with the public interest must be determined from a weighing of all of the considerations disclosed by the evidence [fol. 4544] relating to the purposes enumerated in section 2 of the Act. Accordingly, the examiner re-affirms the rulings he made at the Prehearing Conference to the effect that: (a) The stated purposes of the investigation as framed in the Board's Order of Investigation will govern as the basic issues of this proceeding; and (b) that the inquiry will extend into the several matters upon which Public Counsel seeks testimony from the four requested witnesses as set forth on pages 1 and 2 of Appendix A attached hereto. The parties, of course, may at the hearing contest the admittance of any evidence offered for the record.

All four of the witnesses requested by Public Counsel are to be available at the time of hearing. At the Con-

ference Counsel for Hughes Tool Co. and TWA agreed to submit, on or before May 26, 1947 proposed statements by each of the four witnesses covering the matters they have been requested to testify upon by Public Counsel, together with all supporting exhibits, providing, however, that Public Counsel agreed to disclose the nature of their evidence and the names of their witnesses.

There was considerable discussion at the Conference with respect to the nature of the evidence Public Counsel might present and the number and names of the witnesses that they may call in this proceeding. At that time Public Counsel stated they did not know whether or not they would have direct evidence to submit in the proceeding and they refused to indicate whether or not they would have any witnesses in this case. Public Counsel took the further position that not until they had an opportunity to study the evidence submitted by the parties would they be in a position to determine their need for any affirmative proof. Counsel for both Hughes Tool and TWA strongly urged that Public Counsel be required to advise the parties of the nature of the evidence they planned to present and the names of the witnesses they intended calling. The [fol. 4545] examiner indicated that the Report of the Prehearing Conference would contain a specific ruling on this question.

Since the Conference, in a letter to the examiner dated April 22, 1947, Public Counsel stated that if they deemed it necessary to introduce direct evidence in this proceeding, due notice, together with the detail of the evidence sought to be introduced, will be given all parties. They also stated that if they planned to produce any witnesses their names will seasonably be indicated.

The examiner specifically rules that the essential character of the direct evidence to be submitted by Public Counsel, if any, as well as the names of each of their witnesses, if any, and the nature of the testimony of such witnesses be made known to the other parties to this proceeding not later than one week after the receipt of the proposed testimony of the four witnesses requested by Public Counsel, together with all supporting exhibits ap-

plicable thereto. In view of this ruling, Counsel for Hughes Tool Co. and TWA are expected to submit the proposed testimony of each of said four witnesses (together with all said supporting exhibits) on or before May 26, 1947.

Counsel for Hughes Tool and TWA both agreed to submit the documentary materials and data enumerated in sections (a) through (e), inclusive, as set forth on Pages 2 and 3 of Appendix A. They refused, however, to agree to stipulate items (2) and (3) as shown on Page 4 of said appendix. As a result, Public Counsel indicated that they would submit said items for receipt into evidence at the time of hearing. The examiner will rule on their admissibility at that time.

[fol. 4546] At the Conference the hearing was tentatively set for June 9, 1947. By letter dated April 24, 1947 Counsel for Hughes Tool Co. informed the examiner that because of the press of other business it may not be convenient for Mr. Hughes to appear as a witness on or about the date tentatively set for hearing. In the event June 9 is not for any reason satisfactory as the hearing date to either Hughes Tool Co. or TWA, they are requested to advise the examiner by May 26, 1947 of a date more acceptable or convenient to them.

/s/ Edward T. Stodola
Edward T. Stodola
Examiner

[fol. 4547]

APPENDIX A

—1—

Evidence Requested by Public Counsel

In addition to the specifically designated items appearing at the end of this section, Public Counsel requests that Hughes Tool Company or TWA place in evidence testimony by four witnesses covering the following matters:

1. Noah Dietrich, with regard to the relationship of Hughes Tool Co. to the management of TWA between

October 17, 1944 and January 9, 1947, with particular emphasis upon TWA's financing, route development, equipment programs, and internal organization.

It is also requested that Mr. Dietrich give testimony covering Hughes Tool Company's plans, actual and contemplated, with respect to TWA with particular emphasis on financing, route development, equipment programs, and internal organization.

It is further requested that Mr. Dietrich give testimony covering any activities in the field of aeronautics of Hughes Tool Co. from the period October 17, 1944 to the present and all plans, actual and contemplated, for such activities in the future.

2. Howard R. Hughes, with respect to his personal relationship to TWA from October 17, 1944 to the present, covering the matters referred to in paragraph one above, with particular emphasis upon the personal control exercised by him over TWA's affairs during such period, and his plans for TWA's future operations, including but not necessarily limited to each of the items referred to in paragraph one above, as such plans may now reasonably be foreseeable.

—2—

[fol. 4548] 3. A. V. Leslie, with regard to the present and future policy of Hughes Tool Co. with respect to the management of TWA with particular emphasis upon TWA's financing, route development, equipment program, and internal organization. Such testimony should include the reasons for such policy conclusions and a statement of those who participated in reaching such conclusions.

4. John M. Lockhart, with regard to factual data concerning TWA's financing plans, including any and all conferences, reports, and memoranda relating thereto, and the extent to which such plans were carried out from October 17, 1944 to date.

The testimony requested of these four witnesses should be accompanied by supporting documents, memoranda, correspondence, and reports.

In addition to the above it is requested that the following be submitted:

(a) Letter agreement of January 8, 1947, between TWA and Hughes Tool Co., accepted by the Board of Directors of TWA on January 9, 1947, and all documents, memoranda, and correspondence subsequent to January 8, 1947, relating to action taken by the parties pursuant to that agreement.

(b) Report dated September 16, 1946 on Transcontinental and Western Air, Inc., prepared jointly by the Bankers Trust Company, The First of Boston Corporation and the Mellon National Bank and Trust Company.

—3—

[fol. 4549] (c) Pledge agreement(s) between the Union Trust Company of Pittsburgh and Hughes Tool Company relating to the $6,000,000 loan evidenced by a note payable by Hughes Tool Company, September 5, 1947.

(d) A report of Robert Heller and Associates to TWA.

(e) Minutes of the following meetings:

1. January 28, 1942 Board of Directors (particularly letter of Frye to Eyesmans dated January 29, 1942 appearing after page 506 in the 1942 Minute Book).
2. March 18, 1943, Board of Directors.
3. November 8, 1946, Board of Directors.
4. December 11, 1946 to date of hearing, Board of Directors.
5. Executive Committee meeting minutes January 1, 1947 to date of hearing.
6. Meeting of Stockholders scheduled for April 24, 1947.

Stipulation of Counsel

It is hereby stipulated and agreed by and between Counsel for each party hereto and Public Counsel, that the following documents shall by this reference be incorporated and considered a part of the record in the above-entitled proceeding:

—4—

[fol. 4550] 1. The record including exhibits in the matter of an application of Hughes Tool Company under section 408 of the Act for approval of control of TWA, Docket No. 1182.

2. The record in the matter of the applications of Charles W. Perelle and TWA under section 409(a) of the Act for approval of interlocking relationships, Docket No. 1739.

3. The record in the matter of the application of Noah Dietrich and TWA under section 409(a) of the Act for approval of interlocking relationships, Docket No. 2843.

4. TWA's Form 2780's for a period to and including date of the Board's decision in this proceeding.

Washington, D. C.

April 17, 1947

[fol. 4551]
[Stamp—Illegible—May 12, 1947—C. Furlliacus, Chief; Docket Section]

Docket No. 2796

REPORT OF PREHEARING CONFERENCE

REGISTERED:

Thomas A. Slack, Andrews, Kurth, Campbell & Bradley, Houston, Texas

Gerald B. Brophy, Chadbourne, Wallace, etc., 25 Broadway, New York, N. Y.

REGULAR:

Hughes Tool Company, Gulf Bldg., Houston, Texas

Neil S. McCarthy, 510 West 6th St., Los Angeles 14, Calif.

Palmer Bradley, Andrews, Kurth, Campbell & Bradley, Houston, Texas

T. W. A., Att: Secretary, 101 W. 11th St., Kansas City 6, Mo.

C. E. Fleming, c/o T. W. A., Hangar #2, Washington National Airport, Wash., D. C.

James K. Crimmisn, Chadbourne, Wallace, etc., 25 Broadway, New York, N. Y.

George A. Spater, Chadbourne, Wallace, etc., 25 Broadway, New York, N. Y.

SPECIAL MESSENGER:

Burgess)
Delany) POD

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Examiner: Stodola B-107
Public Counsel: Highsaw B-38 Batavia B-B-37c
Kennedy B-38 Buckley B-68
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[fol. 4552]

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

DOCKET No. 2796.

REPORT OF SUPPLEMENTARY PREHEARING CONFERENCE

Served: JUL 16 1947

Upon:

Thomas A. Slack for Hughes Tool Company

Gerald B. Brophy for Transcontinental & Western Air, Inc.

Gabriel J. Batavia, Public Counsel.

Exceptions, if any, to matters contained in this report must be filed with Examiner Edward T. Stodola and served on all other counsel within 5 days from the date of service shown above.

[fol. 4553]

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

DOCKET No. 2796

TWA-HUGHES TOOL COMPANY INVESTIGATION

In the matter of transactions between Hughes Tool Company and Transcontinental & Western Air, Inc., and related matters.

REPORT OF SUPPLEMENTARY PREHEARING CONFERENCE HELD JULY 14, 1947

Presiding:

Edward T. Stodola, Examiner

Pursuant to notice, a supplementary Prehearing Conference was held on July 14, 1947, at 10:00 a.m., in Room 5132, Department of Commerce Building, 15th Street and Constitution Avenue, N.W., Washington, D. C. The following persons were present:

Thomas A. Slack (Andrews, Kurth, Campbell and Bradley) for Hughes Tool Company

Gerald B. Brophy (Chadbourne, Wallace, Park & Whiteside) and *C. E. Fleming* for Transcontinental & Western Air, Inc.

Daniel J. Buckley for the Operations Division of the Economic Bureau, Civil Aeronautics Board.

Gabriel J. Batavia and *William F. Kennedy*, Public Counsel.

Reference is made to a Report of the Prehearing Conference held in this matter on April 17, 1947. Said Report was served on May 17, 1947 and is now on file with the Dockets Section of the Civil Aeronautics Board.

After the issuance of said Report, Respondents TWA and Hughes Tool Company moved the Board for a severance or division into two parts the original Order of Investigation in such manner that a preliminary or separate investigation and hearing be held for the purpose of determining the questions raised by paragraph (1) of the [fol. 4554] Board's original Order of Investigation, and that a second subsequent investigation be held to determine the questions raised by paragraph (2) of said original order if, as a result of the Board's findings in the first hearing, such second hearing shall be deemed necessary.

The Board, on June 18, 1947, granted Respondents' request for severance and ordered[1] that first a hearing be held to determine whether the transactions referred to in paragraph (1) of the Board's Order of Investigation of February 7, 1947, have resulted or will result in an acquisition of control of TWA for which Board approval is required, pursuant to section 408 of the Civil Aeronautics Act of 1938, as amended, and that hearing on the other issues raised by said order of February 7, 1947 be deferred pending Board's decision on the aforesaid issue. Accordingly, in the present or first phase of this proceeding there will be determined the question whether the matters referred to in paragraph (1) of the original Order of Investigation have resulted or will result in an acquisition of control for which Board approval is required and a second subsequent investigation will be held to determine the questions set forth in paragraphs (2) and (3) of the Board's original order if, as a result of the Board's decision in the first hearing, such second hearing shall be deemed necessary. [fol. 4555] The Board's order of June 18, 1947, granting Respondents' request for severance, specifically limits the present inquiry to the three subjects enumerated in the first paragraph of the Board's original Order of Investigation, namely: (1) the letter-agreement of January 8, 1947, between Hughes Tool Company and TWA, accepted by the Board of Directors of TWA on January 9, 1947; (2) any arrangement or action related to said letter-agreement and (3) any change in the activities of Hughes Tool Company in the field of aeronautics since October 17, 1944. With respect to evidence of any arrangements or action related to the letter-agreement, the undersigned ruled at the Conference that evidence on matters of actual control would be limited to matters that have taken place since the effective date of the letter-agreement.

Attached hereto as Appendix A is a list of requests for evidence and information circulated at the Conference by Public Counsel. Counsel for Hughes Tool Company agreed to furnish the information requested of the Hughes Tool

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[1] Order Serial No. E-657.

Company (and of the Aircraft Division of the Hughes Tool Company) as listed on pages 1 and 2 of said appendix. Both Counsel for TWA and Hughes Tool Company agreed to the submission of the letter-agreement of January 8, 1947, between Hughes Tool Company and TWA and all documents, memoranda, and correspondence since January 8, 1947 relating to action taken by the parties pursuant to the agreement. Likewise, both Counsel agreed to stipulate items 1 and 2 of Public Counsel's proposed stipulation of evidence as found on page 3 of Appendix A.

[fol. 4556] Both Counsel for Hughes Tool Company and for TWA urged expeditious disposition of this proceeding. Counsel for Hughes Tool Company requested that hearing in this matter be held at Los Angeles, California on the ground that the company's principal witness is at present occupied with certain urgent business matters at Los Angeles and on the further ground that all of the records of the Aircraft Division of the company are located there. Hearing in the first phase of this proceeding was tentatively set for July 28, 1947.

/s/ EDWARD T. STODOLA
Edward T. Stodola
Examiner

[fol. 4557]

APPENDIX A

—1—

Evidence Requested by Public Counsel

In addition to the specifically designated items appearing at the end of this section, Public Counsel requests that Hughes Tool Company and/or Transcontinental & Western Air, Inc. place in evidence testimony covering the following matters:

(1) Hughes Tool Company

(a) Brief description of business and products and activities, including total number of employees.

(b) Annual reports for the years 1944, 1945 and 1946, exclusive of cost and production data.

(c) A schedule showing purchases and sales of the stock of TWA by Hughes Tool Company from October 17, 1944 to June 30, 1947 by date and number of shares of stock purchased or sold, giving as a result of each transaction the proportion of TWA stock held.

(d) Names and description of and proportionate interests held by Hughes Tool Company and/or Howard Hughes in other business enterprises, corporate or otherwise, which are interested directly or indirectly in air carriers, persons engaged in any other phase of aeronautics or common carriers.

(e) Individuals holding offices and/or directorships in both Hughes Tool Company and Transcontinental & Western Air, Inc.

[fol. 4558]

—2—

(2) Hughes Aircraft Division

(a) Number of employees as of July 1, 1947.

(b) Brief description of physical plant, wherever located (whether owned or leased), presently occupied or contemplated.

(c) Operations.

(1) Scope of present operations.

(2) Scope of anticipated operations.

(3) Number and type of aircraft produced from October 17, 1944, to date.

(d) Description of aircraft now being or planned to be manufactured.

(1) Type.

(2) Capacity in cargo and/or passengers.

(3) Adaptability to commercial air transport service.

(e) Description of other equipment now being or planned to be manufactured, such as radar and other devices, which may be utilized in the field of aeronautics or which are suitable for use in other allied fields.

(1) Type.

(2) Availability for commercial air transport service.

(3) Other purposes.

(f) Copies of any contracts between Hughes Tool Company and the Government or any other parties relating to the production or sale of aircraft or other devices which may be utilized in the field of aeronautics.

(g) Balance sheet as of June 30, 1947, and Profit and Loss Statement for the year 1946.

—3—

[fol. 4559] In addition to the above, it is requested that the following be submitted:

Letter Agreement of January 8, 1947, between Hughes Tool Company and Transcontinental & Western Air, Inc., accepted by the Board of Directors of Transcontinental & Western Air, Inc. on January 9, 1947, and all documents, memoranda, and correspondence since January 8, 1947, relating to action taken by the parties pursuant to that agreement.

Stipulation of Counsel

It is hereby stipulated and agreed by and between Counsel for each party hereto and Public Counsel, that the following documents shall by this reference be incorporated into and considered a part of the record in the above-entitled proceeding.

(1) The record, including exhibits, in the matter of an application of Hughes Tool Company under section 408 of the Act for approval of control of Transcontinental & Western Air, Inc., Docket No. 1182.

(2) The record in the matter of the applications of Noah Dietrich and Transcontinental & Western Air, Inc. under section 409(a) of the Act for approval of interlocking relationships, Docket No. 2843.

[fol. 4560] [Handwritten notation—Orig]

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

DOCKET No. 2796.

TRANSCONTINENTAL & WESTERN AIR, INC.
FURTHER CONTROL BY HUGHES TOOL CO.

REPORT OF PREHEARING CONFERENCE
Served: FEB 11 1949

Upon:

Thomas A. Slack for Hughes Tool Company.

Gerald B. Brophy for Transcontinental & Western Air, Inc.

James L. Highsaw, Jr., Public Counsel.

Exceptions, if any, to matters contained in this report must be filed with Examiner Edward T. Stodola and served on all other counsel within 5 days from the date of service shown above.

[fol. 4561]

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

DOCKET NO. 2796

TRANSCONTINENTAL & WESTERN AIR, INC.
FURTHER CONTROL BY HUGHES TOOL CO.

In the matter of transactions between Hughes Tool Company and Transcontinental & Western Air, Inc., and related matters.

REPORT OF PREHEARING CONFERENCE
HELD FEBRUARY 4, 1949

Presiding:

Edward T. Stodola, Examiner

Pursuant to notice, a prehearing conference was held on February 4, 1949, at 10:00 a.m., in Room 1011, Temporary Building No. 5, 16th Street and Constitution Avenue, N. W., Washington, D. C. The following persons were present:

Thomas A. Slack (Andrews, Kurth, Campbell & Bradley) for Hughes Tool Company.

Gerald B. Brophy (Chadbourne, Wallace, Parke & Whiteside) and *C. E. Fleming* for Transcontinental & Western Air, Inc.

James L. Highsaw, Jr., Gabriel J. Batavia, and *Harold Morgan,* Public Counsel.

The Board, in Docket No. 1182,[1] by order dated October 17, 1944 approved an acquisition of control of Transconti-

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[1] *Transcontinental & W. A., Control by Hughes Tool* 6 C.A.B. 153 (1944). The Board, however, placed several terms and conditions in the order of approval which, in effect, limit the right of Hughes Tool Company to engage in commercial transactions involving aeronautical property with TWA.

nental & Western Air, Inc., (TWA), by the Hughes Tool Company (Toolco), hereinafter sometimes referred to as "respondents" for the purposes of subject proceeding. By order dated February 7, 1947 (Order Serial No. E-289), the Board instituted an investigation into a letter agreement between Toolco and TWA, dated January 8, 1947, and accepted by the Board of Directors of TWA on January

[fol. 4562] 9, 1947. The letter agreement provided, among other things, for a loan by Toolco to TWA in the amount of 10 million dollars in exchange for the latter's 2¾ percent notes convertible at Toolco's option into common stock of TWA, and for the reconstitution, upon the occurrence of certain events, of the board of directors of TWA. The Board instituted the proceeding to determine whether the letter agreement or any arrangement or action related thereto or any change in the activities of Toolco in the field of aeronautics since October 17, 1944, has resulted in an acquisition of control of TWA for which Board approval was required under section 408 of the Civil Aeronautics Act; to determine whether such acquisition of control, if any, was consistent with the public interest and fulfilled the conditions of section 408 of the Act; and for the purpose of entering any such order or taking such further action as might be deemed appropriate pursuant to the provisions of the Act.

On the motion of Toolco and TWA, the Board on June 18, 1947 (Order Serial No. E-657) ordered that a hearing first be held in this proceeding to determine whether the letter agreement or any arrangement or action related thereto or change in the activities of Toolco in the field of aeronautics since October 17, 1944, had resulted or would result in an acquisition of control of TWA for which Board approval was required under section 408 of the Act and deferred hearing on the other issues raised by its order of February 7, 1947, pending decision of the aforesaid issue.

In accordance with the order of June 18, 1947, a hearing was held to determine whether the transactions referred to had resulted or would result in an acquisition of control over TWA by Toolco for which Board approval was required. After the filing of briefs, an examiner's report

and oral argument thereon, the Board, on June 30, 1948, issued its opinion and order (Serial No. E-1735) finding

—3—

[fol. 4563] that the transactions evidenced by the letter agreement had resulted in further control over TWA by Toolco requiring the Board's approval under section 408 of the Act.

On September 29, 1948, the Board denied petitions filed by Toolco and TWA for reargument, reconsideration, and revocation of the Board's order of June 30, 1948 (Serial No. 2028) to the effect that letter agreement of January 8, 1947 constituted a further acquisition of control requiring approval under section 408. Throughout the first phase of this proceeding, both respondents maintained that the Board's original order in Docket No. 1182 made any further consideration of that question unnecessary. At the prehearing conference on February 4, 1949, respondents reiterated that in proceeding with the second phase of this proceeding they in no way waived their contentions that the Board erred in its decision on the jurisdictional issue in its opinion and order of June 30, 1948.

It must now be determined whether the further acquisition of control found to exist herein is in the public interest and fulfills the conditions of section 408 and whether any further order or action by the Board may be appropriate pursuant to the provisions of the Act. All parties agreed that the provisions of paragraphs (2) and (3) of the Board's Order of Investigation, Order Serial No. E-289, dated February 7, 1947, shall govern as the issues in this second or "public interest" phase of the proceeding.

Respondents, however, restated their previously expressed position that an inquiry on whether or not the further or increased control resulting from the letter agreement is, or is not, inconsistent with the public interest under the terms of section 408 of the Act should be limited to an examination of possible conflict between the aeronautical activities of Toolco and its control of TWA as an air carrier.[2] Public Counsel, on the other hand, took the

[2] Report of Prehearing Conference held April 17, 1947, pages 4-5.

—4—

[fol. 4564] position that the inquiry must necessarily be a broader one; that in a control case of the type here under consideration the question as to whether the further acquisition of control is or is not in the public interest depends upon the application of the criteria set forth in section 2 of the Act to the facts respecting Toolco's actions and policy with regard to TWA in matters of financing, management and related activities; and that in order to determine whether Toolco's increased measure of control is in the public interest it is pertinent to examine the manner of the exercise of Toolco's control since the date of the Board's original approval thereof.

There is nothing in the Act or its legislative history or in Board precedent which would give the examiner authority to proscribe the inquiry in this second phase of the proceeding to the limited question urged upon him by the respondents. On the contrary, it is clear that any acquisition of control sought to be approved under section 408 must be scrutinized in terms of the acquiror's actions and policies respecting the controlled carrier.

The Act envisages a broad concept of the public interest. An examination of the additional control relationship here involved in the light of section 2 of the Act, which the Board has repeatedly found to be necessary in similar cases, requires an examination of the activities of the controlling corporation with respect to TWA for the period during which the prior approved control existed. Such an examination, it should be clear, should not be made for any other purpose at this time but to indicate the kind and character of control which might be forthcoming from the same controller exercising the additional degree of control arising from the transactions evidenced by the letter agreement of January 8, 1947.

Attached hereto as appendix No. 1 is an amended statement of the evidence requested of respondents by Public

—5—

[fol. 4565] Counsel. It was agreed that the three witnesses requested by Public Counsel would be available for examination at the hearing.[3] However, after protests by Coun-

[3] Messrs. Noah Dietrich, Howard R. Hughes and A. V. Leslie. Public Counsel also requested the presence of John M. Lockhart,

sel for Toolco that the requests for testimony of said three witnesses and supporting memoranda, correspondence and documents were not sufficiently specific, it was further agreed that Public Counsel would specify in detail and in writing those documents, memoranda, correspondence and reports relating to the requests made in the items appearing on pages 1 and 2 of appendix No. 1 on or before a date to be assigned by the examiner. The examiner sets February 27, 1949 as the date by which Public Counsel are to comply with the foregoing. Respondents are to furnish Public Counsel with complete statements of the testimony requested of each of three witnesses asked to testify at the hearing, together with the data and documents called for by Public Counsel, on or before April 15, 1949.

After examination of the evidence submitted by the respondents, Public Counsel has agreed to furnish respondents with a specific statement of the evidence Public Counsel may plan to introduce at the hearing, as well as the names of each of the witnesses, if any, which Public Counsel may call. This information is to be furnished respondents on or before May 1, 1949. Any documentary evidence proposed to be introduced by Public Counsel not available to respondents in their own files is to be exchanged with respondents on or before said date of May 1, 1949. It was also agreed that documents to be submitted by Public Counsel which are already available to respondents may be submitted in copy form without the necessity of further authentication at the hearing.

Respondents agreed to enter into the stipulation proposed by Public Counsel (page 4 of appendix No. 1) incor-

—6—

[fol. 4566] porating by that reference certain matters into the record of the second phase of this proceeding.

Formal hearing is hereby tentatively assigned for May 16, 1949.

/s/ Edward T. Stodola
Edward T. Stodola
Examiner

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formerly Treasurer of TWA, as a witness. Upon being informed that Mr. Lockhart is no longer with TWA, Public Counsel stated that they may call him as their own witness.

[fol. 4567]

APPENDIX NO. 1

—1—

Evidence Requested by Public Counsel

In addition to the specifically designated items appearing at the end of this section, Public Counsel request that Hughes Tool Company and TWA place in evidence testimony by the following witnesses covering the following matters:

1. Noah Dietrich, with regard to the part played by Hughes Tool Company in the management of TWA from October 17, 1944, to date of hearing, with particular emphasis upon TWA's financing, route development, equipment programs, and internal organization. It is also requested that Mr. Dietrich give testimony covering Hughes Tool Company's plans with respect to TWA, with particular emphasis on the foregoing matters.

It is further requested that Mr. Dietrich give testimony covering any additional activities in the field of aeronautics of Toolco, actual and contemplated, other than those described by him at the preliminary hearing in this proceeding on September 9-10, 1947.

2. Howard R. Hughes, with respect to his personal participation in the foregoing matters from October 17, 1944, to date of hearing, with particular emphasis upon the degree of personal control exercised by him over TWA's affairs during such period, his plans for TWA's operations, including but not necessarily limited to each of the items referred to in paragraph one above.

3. A. V. Leslie, regarding the policy of Hughes Tool Company respecting TWA on matters of financing and internal organization of which he has knowledge during the period immediately preceding the letter-agreement of January 9, 1947, the interim period from January 9, 1947, to April 24, 1947, and from that time to date.

—2—

[fol. 4568] It is requested that the above testimony be accompanied wherever possible by supporting memoranda, correspondence, and reports and that all said testimony,

insofar as possible, be submitted in writing in advance of the hearing. In this connection, Public Counsel will, by letter, advise each party of those specific documents, memoranda, correspondence, and reports of which they have knowledge, the presentation of which is requested.

Public Counsel do not now know whether or not they will have direct evidence to submit at the hearing. Not until they have had an opportunity to study the evidence submitted by the parties will they be in a position to determine their need for such evidence or any witnesses in this case.

If, however, as a result of the review of the proposed testimony of each of the three witnesses it is deemed necessary to submit evidence in this proceeding, notice thereof, together with a statement of the essential character of that evidence, as well as the names of each of the witnesses which Public Counsel may call, will be given to the other parties in this proceeding.

In addition to the foregoing statements and exhibits, it is requested that the following be submitted:

1. Balance sheets of the Hughes Tool Company and of the Aircraft Division of the Hughes Tool Company as of December 31, 1948, or other appropriate accounting date of said year.

2. Schedule showing the number of shares of TWA stock owned by Hughes Tool Company on January 9, 1947, and the number of shares owned by Hughes Tool Company after conversion of the 2¾ per cent convertible notes, referred to in the letter-agreement of January 9, 1947, showing at each time the proportion of the TWA stock owned by Hughes Tool Company to the

[fol. 4569] total then outstanding.

3. All documents, memoranda, and correspondence subsequent to January 9, 1947, relating to action taken by the parties subsequent to the letter-agreement of said date. This should include, but not be limited to, all documents submitted to other government agencies, stockholders, or creditors of TWA, with specific reference to the agreement of December 26, 1947, between

Hughes Tool Company and TWA; the agreement of June 15, 1948, accepted by Hughes Tool Company June 18, 1948, between Hughes Tool Company and TWA, relating to the conversion of TWA's 2¾ per cent convertible notes into common stock of the carrier; the agreement of March 25, 1948, relating to refinancing and purchase of additional planes and engines; the registration statement filed by TWA with the Securities & Exchange Commission on January 28, 1949; and all other documents and correspondence, including notice to stockholders, proxy statements, minutes of meetings, and all other papers attendant upon the conversion of the above-referred to notes into common stock of TWA.

4. Minutes of the following meetings:

a. January 28, 1942, Board of Directors (particularly the letter of Frye to Eyesmans, dated January 29, 1942, appearing after page 506 in the 1942 Minute Book).

b. March 18, 1943, Board of Directors.

c. November 8, 1946, Board of Directors.

d. December 11, 1946, to date of hearing, Board of Directors.

e. January 1, 1947, to date of hearing, Executive

[fol. 4570] Committee of Board of Directors.

f. April 24, 1947, to date of hearing, Stockholders.

5. Report, dated September 16, 1946, on Transcontinental & Western Air, Inc., prepared jointly by Bankers Trust Company, The First of Boston Corporation, and the Mellon National Bank and Trust Company.

6. A report of Robert Heller and Associates to TWA.

7. Affidavits of banking houses (June, 1948), relating to the conversion of the 2¾ per cent notes.

Stipulation of Counsel

It is hereby stipulated by and between Counsel for each party hereto and Public Counsel that the following documents shall by this reference be incorporated into and considered part of the record in this proceeding:

1. Record including exhibits in the matter of the application of Hughes Tool Company under section 408 of the Act for approval of control of TWA, Docket No. 1182.

2. The record including exhibits in the first phase of the proceeding in Docket No. 2796.

3. Record in the matter of the application of Noah Dietrich and TWA under section 409 (a) of the Act for approval of interlocking relationships, Docket No. 2843.

4. The monthly and quarterly reports, Forms 41 and 41-A, filed by TWA up to the date of the Board's final decision in this second phase of the proceeding in Docket No. 2796.

Washington, D. C.

February 4, 1949

[fol. 4641]
[Handwritten notation—Orig]

Orders

Serial Number E-289

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

At a session of the Civil Aeronautics Board held at its office in Washington, D. C. on the 7th day of February, 1947.

Docket No. 2796

In the Matter of transactions between

HUGHES TOOL COMPANY

and

TRANSCONTINENTAL & WESTERN AIR, INC.
and related matters

ORDER OF INVESTIGATION

IT APPEARING TO THE BOARD:

1. That the Board by Order Serial No. 3210, dated October 17, 1944, Docket No. 1182, approved the acquisition by Hughes Tool Company (hereinafter called Hughes Tool) of control through stock ownership of Transcontinental and Western Air, Inc. (hereinafter called TWA) subject to certain conditions as set forth in said order, as amended by Order Serial No. 4437, dated January 26, 1946; and

2. That Hughes Tool has transmitted to the Board a copy of a letter agreement between that company and TWA, dated January 8, 1947, and accepted by the Board of Directors of TWA on January 9, 1947, providing among other things (1) for a loan by Hughes Tool to TWA and issuance to Hughes Tool of notes for such loan with an option to convert said notes into common stock of TWA; and (2) for

[fol. 4642] the reconstitution, upon the occurrence of certain events, of the Board of Directors of TWA, so that a majority of directors will be nominees of Hughes Tool; and

3. That as a consequence of, or in connection with, the foregoing, there may have been or may be such a change in the character or extent of the control of Hughes Tool over TWA as to constitute an acquisition of control requiring approval under section 408 of the Civil Aeronautics Act of 1938, as amended; and

The Board acting on its own initiative and pursuant to the powers vested in it by the Civil Aeronautics Act of 1938, as amended, particularly sections 205(a), 408, and 1002(b) thereof, and finding that an investigation of the foregoing matters is necessary in order to carry out the provisions of said Act and to exercise and perform its powers and duties thereunder;

IT IS ORDERED:

1. That an investigation be, and it hereby is, instituted for the purpose of:

(1) Determining whether the letter-agreement of January 8, 1947, between Hughes Tool and TWA, accepted by the Board of Directors of TWA on January 9, 1947, or any arrangement or action related thereto, or any change in the activities of Hughes Tool in the field of aeronautics since October 17, 1944, has resulted or will result in an acquisition of control of TWA for which Board approval is required pursuant to section 408 of the Civil Aeronautics Act of 1938, as amended;

(2) Determining whether such acquisition of control, if any, is consistent with the public interest and fulfills the conditions of said section 408; and

[fol. 4643] (3) Entering any such order or taking any such further action herein as may be appropriate pursuant to the provisions of the Civil Aeronautics Act of 1938, as amended.

2. That the proceeding ordered herein be assigned for hearing before an Examiner of the Board at a time and place hereafter to be designated.

3. That Hughes Tool and TWA be made parties to the proceeding herein and that a copy of this order be served upon such parties.

By the Civil Aeronautics Board:

/s/ M. C. MULLIGAN
M. C. Mulligan
Secretary

(SEAL)

[fol. 4644]

Orders

Serial Number E-326

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

At a session of the Civil Aeronautics Board held at its office in Washington D. C. on the 27th day of February, 1947

DOCKET No. 2796

In the matter of transactions between

HUGHES TOOL COMPANY

and

TRANSCONTINENTAL & WESTERN AIR, INC.
and related matters.

ORDER OF INSPECTION AND EXAMINATION

It Appearing to the Board:

1. That the Board by order Serial No. E-289, dated February 7, 1947, Docket No. 2796, ordered an investigation

into certain transactions between Hughes Tool Company (Hughes Tool) and Transcontinental & Western Air, Inc. (TWA), evidenced by letter agreement of January 8, 1947, between Hughes Tool and TWA, and

2. That said investigation was ordered to determine whether said letter agreement of January 8, 1947, accepted by the Board of Directors of TWA on January 9, 1947, or any arrangement or action related thereto, or any change in the activities of Hughes Tool in the field of aeronautics since its acquisition of control of TWA by stock ownership was approved by the Board on October 17, 1944, has resulted or will result in an acquisition of control of TWA; [fol. 4645] for which Board approval is required pursuant to section 408 of the Civil Aeronautics Act of 1938, as amended, to determine whether such acquisition of control, if any, is consistent with the public interest and fulfills the conditions of said section 408, and to determine what order or what further action may be appropriate pursuant to the provisions of the Civil Aeronautics Act of 1938, as amended; and

The Board, acting pursuant to the powers vested in it by the Civil Aeronautics Act of 1938, as amended, particularly section 407(e) thereof, and finding that an inspection and examination by its representatives of the accounts, records, and memoranda, including all documents, papers and correspondence, now or hereafter existing, and kept or required to be kept by TWA, is necessary for the administration of the Act, and particularly in connection with its Order of Investigation dated February 7, 1947, referred to in paragraph I, hereof;

IT IS ORDERED:

That any employee or employees of the Board designated by the Secretary of the Board in writing shall at all times during the pendency of the proceeding instituted by Order Serial No. E-289, dated February 7, 1947, Docket No. 2796, have access to and authority to inspect and examine all accounts, records, and memoranda, including all

documents, papers, and correspondence, now or hereafter existing, and kept or required to be kept by TWA.

By the Civil Aeronautics Board:

/s/ M. C. MULLIGAN
M. C. Mulligan
Secretary

(SEAL)

[fol. 4646]

Orders
Serial Number E-327

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

At a session of the Civil Aeronautics Board held at its office in Washington, D. C., on the 27th day of February, 1947

DOCKET No. 2796

In the matter of transactions between

HUGHES TOOL COMPANY

and

TRANSCONTINENTAL & WESTERN AIR, INC.
and related matters

ORDER OF INSPECTION AND EXAMINATION

It appearing to the Board:

1. That the Board by Order Serial No. E-289, dated February 7, 1947, Docket No. 2796, ordered an investigation into certain transactions between Hughes Tool Company (Hughes Tool) and Transcontinental & Western Air, Inc. (TWA), evidenced by letter agreement of January 8, 1947, between Hughes Tool and TWA; and

2. That said investigation was ordered to determine whether said letter agreement of January 8, 1947, accepted by the Board of Directors of TWA on January 9, 1947, or any arrangement or action related thereto, or any change in the activities of Hughes Tool in the field of aeronautics since its acquisition of control of TWA by stock ownership was approved by the Board on October 17, 1944, has resulted or will result in an acquisition of control of TWA, [fol. 4647] for which Board approval is required pursuant to section 408 of the Civil Aeronautics Act of 1938, as amended, to determine whether such acquisition of control, if any, is consistent with the public interest and fulfills the conditions of said section 408, and to determine what order or what further action may be appropriate pursuant to the provisions of the Civil Aeronautics Act of 1938, as amended; and

The Board, acting pursuant to the powers vested in it by the Civil Aeronautics Act of 1938, as amended, particularly sections 407(e) and 408(d) thereof, and finding that Hughes Tool is a person heretofore authorized to acquire control and having control of TWA, and finding further that an inspection and examination by representatives of the Board of accounts, records, memoranda, documents, papers, and correspondence hereinafter described in paragraph 1 below, is reasonably necessary for the administration of said Act, particularly in connection with its order of investigation dated February 7, 1947, referred to above:

IT IS ORDERED:

1. That the provisions of sections 407(e) and 408(d) of the Civil Aeronautics Act are made applicable to Hughes Tool to the extent necessary to afford the Board and its representatives access to and authority to inspect and examine, with respect to the period from and after October 17, 1944, (1) all correspondence between Hughes Tool, or any director, officer, stockholder, or employee thereof, and TWA, or any director, officer, or employee thereof, (2) all correspondence between Hughes Tool, or any director, officer, employee, or stockholder thereof, and Re-

construction Finance Corporation, or any banking, financial, or insurance institution or any director, officer, or [fol. 4648] employee thereof, relating to the loan of money to TWA or the financing of TWA in any manner, (3) all accounts, records, and memoranda, including all documents, papers, and correspondence, relating to the purchase or sale by Hughes Tool or any director, officer, employee, or stockholder thereof of stock of TWA, (4) all accounts, records, and memoranda, including all documents, papers and correspondence, relating to the sale or purchase of aircraft by Hughes Tool, and (5) all other accounts, records, and memoranda, including all documents, papers, and correspondence, which relate to activities of Hughes Tool as a person engaged in a phase of aeronautics or in connection with its stock interest in TWA, now or hereafter existing, and kept or required to be kept by Hughes Tool;

2. That any employee, or employees, of the Board designated by the Secretary of the Board in writing shall at all times during the pendency of the proceeding instituted by Order Serial No. E-289, dated February 7, 1947, have access to and authority to inspect the accounts, records, and memoranda, including documents, papers, and correspondence, now or hereafter existing, and kept or required to be kept by Hughes Tool, set forth in ordering paragraph 1 hereof.

By the Civil Aeronautics Board:

/s/ M. C. MULLIGAN
M. C. Mulligan
Secretary

(SEAL)

[fol. 4649] [Handwritten notation—Orig]

Orders
Serial Number E-657

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board at its office in Washington, D. C. on the 18th day of June, 1947.

Docket No. 2796

In the Matter of transactions between

HUGHES TOOL COMPANY

and

TRANSCONTINENTAL & WESTERN AIR, INC.
and related matters

ORDER GRANTING IN PART AND DENYING IN PART MOTION OF HUGHES TOOL COMPANY AND TRANSCONTINENTAL & WESTERN AIR, INC.

Hughes Tool Company and Transcontinental & Western Air, Inc. (TWA) having filed with the Board a Motion for an order to hear and determine separately the question of whether the transactions referred to in paragraph (1) of the Board's Order of Investigation of February 7, 1947, in this proceeding, have resulted or will result in an acquisition of control of TWA for which Board approval is required pursuant to section 408 of the Civil Aeronautics Act of 1938, as amended, and to provide in such order that, in the hearing to determine whether or not the transactions referred to have resulted or will result in an acquisition of control for which Board approval is required, the evidence be limited to certain stated matters; and

The Board, having considered said Motion, the answer thereto of Public Counsel, and the reply of Hughes Tool Company and TWA;

[fol. 4650] IT IS ORDERED:

1. That a hearing be held to determine whether the transactions referred to in paragraph (1) of the Board's Order of Investigaiton of February 7, 1947, have resulted or will result in an acquisition of control of TWA for which Board approval is required, pursuant to section 408 of the Civil Aeronautics Act of 1938, as amended, and that the hearing on the other issues raised by said order of February 7, 1947, be deferred pending the Board's decision on the aforesaid issue; and

2. That the hearing ordered herein shall be held before an Examiner of the Board at a time and place hereafter to be designated; and

3. That in all other respects, the Motion of Hughes Tool Company and TWA be and the same hereby is denied.

By the Civil Aeronautics Board:

/s/ M. C. MULLIGAN
M. C. Mulligan
Secretary

(SEAL)

[fol. 4672]

Orders
Serial Number E-2028

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON 25, D. C.

Adopted by the Civil Aeronautics Board at its office in Washington, D. C. on the 29th day of September 1948

DOCKET No. 2796

In the Matter of transactions between

HUGHES TOOL COMPANY

and

TRANSCONTINENTAL & WESTERN AIR, INC.

and related matters

ORDER DENYING PETITION FOR REARGUMENT AND RECONSIDERATION

Hughes Tool Company and Transcontinental & Western Air, Inc., having filed on August 30, 1948, a petition for reargument and reconsideration in the above-entitled proceeding, and for a revocation by the Board of its order in said proceeding, adopted June 30, 1948, Serial No. E-1735; and

It appearing to the Board that the petitioners have failed to set forth matters sufficient to justify the relief requested.

IT IS ORDERED, That the petition for reargument and reconsideration and revocation of the Board's order be and it hereby is denied.

By the Civil Aeronautics Board:

/s/ M. C. MULLIGAN
M. C. Mulligan
Secretary

(SEAL)

[fol. 4748]

IN UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EXHIBIT B-10 TO AFFIDAVIT OF CHESTER C. DAVIS

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

HUGHES TOOL COMPANY—TWA INVESTIGATION
DOCKET No. 8061 *et al.*

REPORT OF PREHEARING CONFERENCE
Served: JUL 13 1956

Upon:

Raymond A. Cook (Andrews, Kurth, Campbell & Bradley), 2200 Gulf Building, Houston, Texas, and *G. Nathan Calkins, Jr.*, 1700 K Street, N.W., Washington, D. C., for Hughes Tool Company.

George A. Spater (Chadburne, Parke, Whiteside and Wolff), 25 Broadway, New York 4, N. Y., for Trans World Airlines, Inc.

John J. Stowell, Civil Aeronautics Board, Washington 25, D. C., for the Bureau of Air Operations, Civil Aeronautics Board.

Exceptions, if any, to matters contained in this report must be filed with Edward T. Stodola, Hearing Examiner, and served upon all counsel within 5 days from the date of service shown above.

[fol. 4749]

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

HUGHES TOOL COMPANY—TWA INVESTIGATION

DOCKET No. 6081 *et al.*

In the matter of an investigation of proposed transactions between the Hughes Tool Company and Trans World Airlines, Inc.

REPORT OF PREHEARING CONFERENCE HELD JULY 10, 1956.

After appropriate notice, a prehearing conference in the above-entitled matter was held on July 10, 1956, at Washington, D. C.

The following appearances were noted at the conference:

Appearances:

Raymond A. Cook and *G. Nathan Calkins, Jr.*, for Hughes Tool Company.

George A. Spater for Trans World Airlines, Inc.

John J. Stowell and *Robert R. Goodman*, for the Bureau of Air Operations, Civil Aeronautics Board.

In *Transcontinental and W. A. Control by Hughes Tool*, Docket No. 1182,[1] the Board approved the acquisition of control of Trans World Airlines, Inc. (then known as Transcontinental and Western Air, Inc., hereinafter TWA), by the Hughes Tool Company (hereinafter known as Toolco) under section 408 of the Civil Aeronautics Act, subject to the condition, among others, that said approval shall be effective so long as commercial transactions between the two companies were limited to items the price

[1] 6 C.A.B. 153 (1944).

of which did not exceed $200 each, with a total aggregate annual limitation of $10,000. That approval was based in [fol. 4750] part upon a finding that Toolco was then not engaged in, and had no plans contemplating, the production of aircraft, aircraft parts, or other facilities for use in commercial air transportation and upon the absence of any intention on the part of Toolco to engage in any phase of supply for commercial aviation.

In *Transcontinental and W. A. Control by Hughes Tool,* Docket No. 2796,[2] the Board held that a certain agreement, dated January 8, 1947, between Toolco and TWA for the re-financing of the carrier resulted in further control of TWA for which Board approval was required under section 408 of the Act. One of the issues in the latter case was whether any change in the activities of Toolco in the field of aeronautics since the date of the Board's approval in 1944 had affected or altered the character of the control originally approved. The Board concluded there had been no substantial change in Toolco's operations in the field of aeronautics since the 1944 order of approval which would require further Board consideration, under section 408, of Toolco's control of TWA. However, the Board also concluded that a substantial change in the aeronautical activities of Toolco would result in a transaction subject to the Board's jurisdiction under section 408 of the Act by reason of the fact that the character and propriety of control originally approved in Docket No. 1182 might be altered or changed as a result thereof. In *Trans World Air, Control by Hughes Tool,* Docket No. 2796,[3] the Board approved, on the merits, the further acquisition of control of [fol. 4751] TWA by Toolco resulting from the 1947 refinancing arrangements and the Board subjected the approval of the further acquisition of control to the terms and condition attached to the Board's original approval in 1944.

On May 10, 1956, TWA filed a motion, Docket No. 1182, requesting that the Board modify its order in said docket so as not to restrict the right of TWA to acquire from

[2] 9 C.A.B. 381 (1948).

[3] 12 C.A.B. 192 (1950).

Toolco up to 25 jet-powered aircraft suitable for operation by TWA on both its domestic and international routes.

TWA's motion of May 10, 1956, states that Toolco has advised TWA that Toolco is willing to sell the jet aircraft it proposes to manufacture to any other airline at the same price as sold to TWA.

By Order No. E-10360, dated June 8, 1956, the Board instituted an investigation, assigned Docket No. 8061, to determine: (a) whether the proposal of Toolco to manufacture, and sell the jet-powered aircraft to TWA and other airlines, will result in a transaction requiring further Board consideration, under section 408, of the control of TWA by Toolco; and (b) if so, whether the Board should approve or disapprove such transaction under section 408(b) of the Act. By the same order, the Board consolidated TWA's motion in Docket No. 1182, filed May 10, 1956, with the aforesaid investigation.

Among other findings, the Board, in Order No. E-10360, said:

> "It appears . . . that the manufacture of jet aircraft for use of TWA and other airlines by Toolco may result in a substantial change in the activities of Toolco in the field of aeronautics which would require our further consideration, under section 408, of Toolco's control of TWA."

[fol. 4752] Toolco, however, has not filed an application for such approval under section 408 of the Act. At the conference, Counsel for Toolco questioned the jurisdiction of the Board in this proceeding under section 408 of the Act based upon a transaction which might arise as the result of a substantial change in the activities of Toolco in the field of aeronautics, requiring the Board's further consideration under said section of Toolco's control of TWA. Nevertheless, Counsel for Toolco agreed to file an application asking for approval for such possible transaction under section 408, if such approval is deemed necessary, as well as any agreement or agreements between Toolco and TWA relating to the basic proposal herein.

The parties to this proceeding each agreed to the inclusion of aforesaid application of Toolco in this case for

hearing and decision. It was also agreed at the conference that the ultimate issue to be decided under TWA's motion of May 10, 1956, and under a possible transaction arising from the contemplated change in Toolco's aeronautical activities is basically the same.

Attached hereto as Appendix A is a statement of issues which will govern this proceeding. While neither Toolco nor TWA concede the relevance or propriety of each of the inquiries called for by said statement of issues, each has agreed to proceed with hearing on said issues, reserving the right to contest such inquiries and object to evidence with respect thereto in later phases of this proceeding. The foregoing agreement with respect to the issues governing this proceeding does not preclude any party from proposing further or additional issues at the hearing. [fol. 4753] No further or additional issues will be allowed to govern in this matter without the consent of the Examiner.

Attached hereto as Appendix B is a tabulation of information and documents to be supplied by Toolco and/or TWA. The information and documents called for cover all such materials in the possession of Toolco and/or TWA or readily available to either of said parties. Except for evidence which may be appropriately adduced through the testimony of witnesses, all of the aforesaid materials are to be supplied in exhibit form and exchanged between the parties. One copy of all the exhibit material shall be transmitted to the Examiner and two complete and corrected copies of each exhibit must be made available at the hearing for inclusion in the formal record.

The following further procedural dates are hereby established:

Exchange of direct exhibits	July 31, 1956
Exchange of rebuttal exhibits	August 15, 1956
Hearing at Los Angeles, Calif.	August 21, 1956

The order of presentation at the hearing will be as follows: Toolco, TWA, and Bureau Counsel.

/s/ Edward T. Stodola
Edward T. Stodola
Hearing Examiner

[fol. 4754]

Statement of Issues

1. Whether the proposal of Toolco to manufacture and sell up to 25 jet-powered aircraft for TWA and other airlines will result in a transaction requiring further Board consideration, under section 408, of the control of TWA by Toolco, as said issue is raised by Order No. E-10360 dated June 8, 1956.

2. If so, whether the Board should approve or disapprove such transaction under section 408(b) of the Act, as said issue is raised by Order No. E-10360, dated June 8, 1956, and by application to be filed by the Hughes Tool Company for approval of such transaction, if such approval is deemed necessary.

3. Whether the Board should further modify Order No. 3210, dated October 17, 1944, so that the terms thereof will not restrict the implementation of the proposal set forth in TWA's motion filed on May 10, 1956.

The public interest considerations in the foregoing issues are as follows:

1. What are the detriments to the public interest which may flow from the proposal herein?

a. Will the proposal result in restraints on competition?

(1) Will the proposal herein result in a restraint on competition by aircraft manufacturers because they will be unable to bid on equal terms with Toolco for the business of TWA.

(a) Is there any exclusive arrangement between TWA and Toolco whereby TWA may not use or buy jet aircraft from an aircraft manufacturer other than Toolco.

[fol. 4755] Page 2

(2) Is there any restraint on competition between TWA and other air carriers?

(a) Are there any arrangements between Toolco and TWA which give TWA preferential treatment in the form of unduly low sale price of the aircraft, unduly favorable terms of financing, preferential delivery dates of the aircraft, or other preferential terms and conditions in connection with the supplying of parts for the aircraft?

(3) Are the controlling stockholder and interlocking officials of Toolco and TWA subject to conflict of interests with respect to their obligations to TWA, Toolco, the minority stockholders of TWA and the public?

(a) Is there a danger that TWA may pay an excessive or unduly low price for the aircraft?

(b) Will TWA lose its freedom of choice in securing aircraft best suited for its present and proposed operations?

2. What are the advantages to the public interest from the proposal herein?

3. Should the proposal herein be approved or disapproved?

(a) If the proposal herein is approved, what terms and conditions should attach to the order of approval?

[fol. 4756] Appendix B
Page 1

Request for Evidence

1. Agreements and communications between TWA, Toolco and/or third parties:

a. All outstanding agreements, oral and written, between TWA, Toolco and/or third parties, relating to the proposal herein;

b. All communications (written) and memoranda of conversations, between TWA, Toolco and/or third parties, relating to the proposal herein;

c. All outstanding agreements, oral and written, between TWA, Toolco and/or third parties relating to manufacture and sale of Convair 880 and Boeing 707 jets;

d. All communications (written) and memoranda of oral conversations, between TWA, Toolco and/or third parties, relating to the manufacture and sale of Convair 880 and Boeing 707 jets;

e. Communications as used above include communications between officials of the companies involved; and

f. Any agreements relating to the manufacture and sale of Convair 880, Boeing 707 or other jets which include an air carrier and another carrier as parties may constitute a cooperative working arrangement filable under section 412 of the Act.

2. Supply for TWA and Toolco, respectively, conference reports, minutes of meetings of directors, executive committees of stockholders and reports of technical surveys relating to:

a. The proposal herein; and

b. The arrangement for the manufacture and sale of Convair 880 and Boeing 707 jets.

3. A complete analysis of TWA's jet equipment program:

a. Include copies of all contracts for acquisition of jet aircraft; and

[fol. 4757] Page 2

b. Detailed plans for use of such aircraft specifying those portions of the system in which they are to be used and the approximate times for placing such

aircraft into use. A schedule on a future yearly basis showing the planned use of such aircraft, the proposed routes to be flown with the aircraft, and forecasts of traffic to result from jet operations, will satisfy this request.

4. Prepare a table showing on a comparative basis the jets to be acquired by TWA under the proposal herein, the jets known as the Convair 880 and Boeing 707 jets, and the jet aircraft currently contracted for by all other U.S. airlines from manufacturers other than Toolco, with respect to the following characteristics:

a. Arrangements and features

b. Dimensions

c. Range

d. Specifications, including engines, fuel, wing area, cruising speed, payload, maximum gross weight, maximum landing weight and cargo compartment

e. Accommodations of cargo compartments

f. Take-off capability

g. Operation and cost, including operating cost, direct and indirect, on a seat-mile and ton-mile basis

h. Purchase price

i. Manner and terms of financing

j. Expected dates of delivery.

5. Explain why TWA desires to use the jets proposed to be manufactured by Toolco.

[fol. 4758] Page 3

6. Complete analysis of Toolco's civil aircraft manufacturing program. Set forth the number and type of all aircraft which Toolco proposes to manufacture, acquire, finance, sell and lease, including production schedules and dates of proposed acquisitions. Include a list of prospective

customers, including commercial airlines expected to purchase said aircraft.

7. The history of Toolco's experience in the manufacture of aircraft. Set forth all circumstances which indicate that Toolco is able to produce a successful jet competitive with that of other manufacturers; show availability of financing, engineering personnel, organization experience and know-how to effectuate the proposal herein. Include a description of plant and facilities to be available to Toolco for implementing proposed jet program.

8. All present and anticipated financial arangements between TWA and Toolco; including, but not limited to, proposed jet aircraft.

9. TWA's management plan, with respect to present and future route development and equipment programs.

10. Reports or surveys by consultants and technological experts relating to the proposed jet aircraft, if such reports or surveys are available.

11. It is requested that Toolco have Mr. Howard Hughes available as a witness, and that TWA supply management witnesses and technical experts (engineering and traffic).

[fol. 4763]
[Stamp—Served Nov 9 1961]

Order No. E-17675

IN UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

EXHIBIT B-11 TO AFFIDAVIT OF CHESTER C. DAVIS

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 8th day of November, 1961

Docket 11620

In the matter of the

TOOLCO-NORTHEAST CONTROL CASE

ORDER ON REQUEST FOR RELIEF

On November 1, 1961, Northeast Airlines, Inc. (Northeast) and Hughes Tool Co. (Toolco) filed a letter dated October 30, 1961, requesting the Board to "take appropriate action so as to permit Northeast to negotiate and obtain from Toolco funds urgently and immediately required by Northeast.". The letter recites that Toolco has been discussing with Atlas Corporation (Atlas) the acquisition from Atlas of its controlling interest in Northeast,[1] and states the parties' understanding that such acquisition will require Board proceedings under section 408 of the Federal Aviation Act (Act), and that Board decision thereon

[1] Atlas owns approximately 56 per cent of Northeast's common stock and about $16.5 million worth of the carrier's subordinated promissory notes.

will require a substantial period of time. It notes that Northeast has asked Toolco for emergency funds so that the carrier can maintain operations pending the filing of an application for, and approval of, the proposed acquisition of control.

The parties state that they cannot determine the full amount of emergency funds which may be required by Northeast or the specific terms upon which such funds may be provided.[2] They report that Toolco, on October 19, 1961, guaranteed to a supplier payment by Northeast for fuel and oil purchased subsequent to October 20. This guaran- [fol. 4764] tee is subject to cancellation by Toolco upon four days' notice. In a letter dated October 31, 1961 and filed November 2, 1961, Toolco reported that, pursuant to this guarantee, it paid the supplier approximately $40,000 for fuel deliveries to Northeast for the period October 20-27.

The applicants point out that, in Order E-12925, dated August 29, 1958, the Board directed, among other things, that Howard R. Hughes, controlling stockholder of Toolco, "cease and desist from acquiring control, in any manner whatsoever" of any air carrier unless prior Board approval therefor is obtained. Their letter does not discuss the extent to which this provision may preclude advance of funds by Toolco to Northeast without prior Board approval. It merely notes the existence of the cease and desist provision and asks for such Board action as may be deemed appropriate.[3]

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[2] An application filed in Docket C-29, which was later withdrawn, contained an exhibit which was made public by Toolco. In it, Toolco proposed to loan Northeast $5 million before the end of the year. To our knowledge, this proposal was never implemented, and we cite it merely to give some indication of the possible extent of the financial commitment which may be involved.

[3] Specifically, the letter asks that the Board "permit Toolco to provide Northeast with funds . . . without subjecting Toolco or Northeast to any penalties or other action prejudicial to their respective rights or interests and without prejudice, by reason of the so-called Sherman Doctrine or otherwise, to any determination by the Board in connection with an application for the acquisition of a controlling interest in Northeast by Toolco from Atlas."

In support of their request, the applicants allege that Northeast is today providing needed service but that the benefits of its efforts may be lost unless Northeast is successful in establishing a financing program, including provision for immediate funds to sustain it into the peak traffic period of 1961-62 on its Florida routes.

Answers have been filed by Eastern Air Lines, Inc. (Eastern) and National Airlines, Inc. (National). In brief, they allege that Toolco is now in control of Northeast and that Toolco may not legally be exempted from the provisions of section 408, nor should the Board waive the Sherman Doctrine. They assert that Hughes' conduct of airline management in the past has been contrary to the public interest and that his attempts to gain control of another air carrier should therefore be prevented. The objecting carriers request that the Board institute an investigation into the acquisition of control of Northeast by Toolco, which allegedly has already taken place, and that the Board deny the relief requested by the applicants.

A review of the pleadings and the attendant circumstances strongly suggests that Toolco already has the power to exercise substantial influence over the affairs of Northeast and thus controls the carrier today; that financial arrangements of the type contemplated would probably result in the further consolidation of control of Northeast by Toolco, apart from any formal agreement [fol. 4765] transferring to Toolco Atlas' interest in the air carrier; and that effectuation of such arrangements without prior Board approval, therefore, probably violates both the cited provision of Order E-12925 and section 408 of the Act.[4]

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[4] Toolco owns voting trust certificates representing approximately 78 per cent of the voting stock of Trans World Airlines, Inc. (TWA). It also owns almost $81 million worth of TWA debentures and warrants to purchase more than two million additional shares of TWA stock. The company also engages in other aeronautical activities such as the purchase, lease and sale of aircraft. Toolco has contended that, because of the voting trust, it has no control over TWA. We need not determine the accuracy of this claim, for we conclude that Toolco's interests constitute it a person engaged in a phase of aeronautics, within the meaning of section 408. Thus, its acquisition of control of an air carrier would be unlawful if carried out prior to Board approval.

It is our established administrative practice, under normal circumstances in situations of this type, to defer processing of a formal application for Board approval of control under section 408 of the Act until appropriate steps have been taken to restore to the extent feasible the *status quo ante*.[5] Recognizing this policy, the parties have sought to obtain from us a waiver thereof in order to assure that the Board will consider on the merits the application for Board approval, under section 408, of an agreement whereby Toolco would become the controlling shareholder in Northeast. This we are constrained to do. There can be no question of the extraordinary nature of the circumstances here present insofar as they affect the applicability of this administrative policy. The Board has, on other occasions of no greater need, granted relief from the strictures of this policy which requires no statutory finding of public interest.

In addition, the request for relief may be construed as seeking a more affirmative approval of the transfer of funds to Northeast. To the extent that this is sought, it should be clear that we are without power or inclination to do so. As heretofore pointed out, the known circumstances strongly suggest that Toolco is in the process of acquiring or consolidating its control over Northeast. Thus, a request for approval, albeit interim in nature, of transfers of funds to Northeast is clearly a request for approval of a transaction subject to section 408 of the Act. Section 408, in these circumstances, necessitates a hearing before the Board can legally act. Moreover, since the applicants are not air carriers, the Board could not utilize its section 416 exemption powers. To the extent that the applicants seek a waiver from the prohibitions of the cease and desist order, we will also deny relief. Apart from the fact that the order was designed to effectuate our power under section 408 and should, therefore, be treated *in pari materia* with it, it is plain that we would be unable to make necessary public interest findings sufficient to offset those which led to issuance of the order.

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[5] *Sherman, Control and Interlocking Relationships*, 15 C.A.B. 876 (1952).

[fol. 4766] Although the parties allege that the public interest would be served by insuring continued operations by Northeast, their letter is silent as to the basic statutory test—whether the control of Northeast by Toolco would serve the public interest. Toolco has for many years been the controlling shareholder of TWA. Although Toolco has made a major financial contribution to TWA's development, the merit of its management of the carrier has been publicly challenged. Less than a year ago we had occasion to comment on some of the factors which were causes of concern in this regard. See Order E-16195, dated December 29, 1960. In that order, we allowed to go into effect a new TWA financing program, one condition of which was that Toolco would place its TWA stock in a voting trust for which Toolco has the right to designate but one of three voting trustees—an arrangement insisted upon by the carrier's lenders. We also stated therein that we would anticipate the obtaining of the approval of the Board before Toolco could resume control over TWA.

Subsequent to this action, the new management of TWA filed a suit against Hughes, Toolco, and an associate of Hughes. The complaint alleges various acts on the part of the Toolco management in derogation of their managerial responsibilities, and antitrust violations of the Sherman and Clayton Acts. Atlas is named as a co-conspirator. We must take notice of these allegations even though they have not been proven or established. It is reasonable to anticipate that efforts will be made to thoroughly explore them at the hearing.

One other matter remains to be discussed. In order to keep the Board and affected parties fully informed of developments in this matter, we will require that Northeast and Toolco file with the Board's Docket Section continuing reports of all transactions between them and that Toolco report any obligations, financial or otherwise, which it incurs on behalf of Northeast or Atlas. We will also require that the agreement for the acquisition by Toolco of Atlas' interest in Northeast be reduced to writing, and filed with the Docket Section within 15 days of the date of this order.

ACCORDINGLY, IT IS ORDERED:

1. That Toolco and Northeast shall file with the Board, within ten days of the date of service hereof, a complete report of all agreements, understandings, and transactions between them, and of all obligations incurred by Hughes or Toolco on behalf of Northeast or Atlas, which have not heretofore been reported. This report shall include a detailed description of each such occurrence, together with the amount of each such transaction;

2. That Northeast and Toolco shall continue to file such reports, as required by Order E-15532;

[fol. 4767] 3. That any agreement for the acquisition by Toolco of the interest of Atlas in Northeast shall be reduced to writing and filed with the Board within 15 days of the date of service of this order;

4. That upon the filing of an application for approval of such agreement, the matter shall proceed to an expedited hearing;*

5. That, to the extent not granted herein, the relief sought by Northeast, Toolco, Eastern and National be and it hereby is denied; and

6. That this order be published in the Federal Register.

By the Civil Aeronautics Board:

/s/ HAROLD R. SANDERSON
Harold R. Sanderson.
Secretary

(SEAL)

MEMBERS GURNEY AND GILLILLAND DISSENTED.

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* Order E-15532, which established Docket 11620, included an investigation of whether TWA had acquired control of Northeast. In view of developments subsequent to that order, we are hereby dismissing the investigation as to TWA.

[fol. 4768]

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

TOOLCO-NORTHEAST CONTROL CASE
DOCKET 11620

REPORT OF PREHEARING CONFERENCE
Served: Feb 7 1962

Upon:

Chester C. Davis, 120 Broadway, New York 5, N. Y., *Paul A. Porter*, 1229—19th St., N.W., Washington, D. C., and *Raymond A. Cook*, 2200 Gulf Bldg., Houston 2, Texas, for Hughes Tool Company

John C. Meleney, 120 Broadway, New York 5, N. Y., for Northeast Airlines, Inc., and Atlas Corporation

Henry E. Foley, 10 Post Office Square, Boston 9, Mass., for Northeast Airlines, Inc.

Edwin I. Colodny, Allegheny Airlines, Inc., National Airport, Washington 1, D. C., for Allegheny Airlines, Inc.

B. Howell Hill, 815—15th Street, N.W., Washington 5, D. C., for Braniff Airways, Inc.

James W. Callison, Legal Division, Delta Air Lines, Inc., Atlanta Airport, Atlanta, Georgia, for Delta Air Lines, Inc.

Harold L. Russell, 825 C & S Bank Bldg., Atlanta 3, Georgia, for Eastern Air Lines, Inc.

John W. Cross, 729—15th Street, N.W., Washington 5, D. C., for National Airlines, Inc.

John M. Kelleher, 135 East 42nd Street, New York 17, N.Y., for Pan American World Airways, Inc.

Mitchell Strickler, 500 Wyatt Bldg., Washington, D. C., for Riddle Airlines, Inc.

Paul Y. Seligson, Civil Aeronautics Board, Washington 25, D. C., for Bureau of Economic Regulation

Exceptions, if any, to matters contained in the report must be filed with Examiner Merritt Ruhlen and served upon all parties within 5 days from the date of service shown above.

[fol. 4769]

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

TOOLCO-NORTHEAST CONTROL CASE

DOCKET 11620

REPORT OF PREHEARING CONFERENCE
HELD JANUARY 22, 1962

A prehearing conference was convened at 10:00 a.m. on January 22, 1962, in Room 911 of the Universal Building, 1825 Connecticut Ave., N.W., Washington, D. C. The following appearances were noted:

Chester C. Davis, Paul A. Porter, and *Raymond A. Cook*, for Hughes Tool Company

John C. Meleney, for Northeast Airlines, Inc., and Atlas Corporation

Henry E. Foley and *Clarence I. Peterson* for Northeast Airlines, Inc.

Edwin I. Colodny for Allegheny Airlines, Inc.

B. Howell Hill and *Walter D. Hansen* for Braniff Airways, Inc.

James W. Callison, R. S. Maurer, and *Frank F. Roy*, for Delta Air Lines, Inc.

Harold L. Russell, E. Smythe Gambrell, and *James H. Bratton, Jr.,* for Eastern Air Lines, Inc.

John W. Cross, Andrew T. A. Macdonald, and *Jerome Baron,* for National Airlines, Inc.

John M. Kelleher, for Pan American World Airways, Inc.

Mitchell Strickler for Riddle Airlines, Inc.

Paul Y. Seligson for the Bureau of Economic Regulation

ISSUES

The Board on December 8, 1961, directed that this proceeding which involves the question "whether Hughes Tool Company or Howard Hughes has acquired control of Northeast Airlines, Inc., and whether such control should be approved * * * be set down for hearing * * * on an expedited basis."

[fol. 4770] On January 8, 1962, Hughes Tool Company, Northeast Airlines, Inc., and Atlas Corporation filed an application requesting approval of the acquisition of control of Northeast by Toolco from Atlas. This application was assigned Docket 13328.

At the Prehearing Conference the Examiner ruled that he would recommend that this latter application be consolidated herein and the conference was held on that basis.

Toolco and Northeast contended that the investigation in Docket 11620 was merged with the proceeding on the application in Docket 13328, that the issues raised in Docket 11620 were now moot, and that the issues herein should be limited to those raised by the application in Docket 13328.

The Examiner ruled that the issues raised in Docket 11620 were not moot and would be litigated herein.

Toolco argued that the issues herein should be limited to the question whether the aeronautical activities of Toolco would render its acquisition of Northeast inconsistent with the public interest.

The Bureau of Economic Regulation, on the other hand, contended that once the Board obtains jurisdiction of an airline acquisition case it must consider all aspects of the public interest including those which have no relationship with the acquirer's other aeronautical activities.

An examination of the Act would indicate that in acquisition cases Congress intended only to question the effect of [fol. 4771] the acquirer's aeronautical activities upon the acquired airline. Otherwise, it would seem the Congress would have required any person acquiring an airline to prove the transaction was in the public interest.

This seems to have been the view adopted by the Board in *Transcontinental & W. A., Control by Hughes Tool,*[1] when it was considering the acquisition of the control of TWA by Hughes and said, "The object of any condition to the continued control of TWA by Hughes Tool inserted at this time in the authority granted by the Board should be to protect the public interest from any improper coercion of the air carrier by a controlling company on account of any interest which that controlling company may have in some other phase of aeronautics."

A similar limitation of the issues herein would facilitate the expedition which the Board has directed.[2]

The Board, however, seems to have overruled its earlier holding on this question in a later case involving the control of TWA by Toolco when it held:

> "• • • once jurisdiction over an acquirer of an air carrier is found to exist, the testing of the propriety of approving the acquisition requires a *rather broad inquiry* into the relationships between the controlling and the controlled companies • • •. Aside from any undesirable influence on an air carrier which might arise because of the acquirer's interest in a given phase of aeronautics, *an acquirer of an air carrier is not without responsibility in other respects for an air carrier's general capacity to perform its public responsibilities.*"[3]

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[1] 6 C.A.B. 153, 157 (1944).

[2] *Toolco-Northeast Control Case*, Docket 11620, Order E-17811, dated Dec. 8, 1961, pages 13-14 of Mimeographed Opinion.

[3] 12 C.A.B. 192, 196. Emphasis supplied.

[fol. 4772] Furthermore, in its Order of November 8, 1961,[4] in this case the Board said:

> "Subsequent to this action, the new management of TWA filed a suit against Hughes, Toolco, and an associate of Hughes. The complaint alleges various acts on the part of the Toolco management in derogation of their managerial responsibilities, and antitrust violations of the Sherman and Clayton Acts. Atlas is named as a co-conspirator. We must take notice of these allegations even though they have not been proven or established. It is reasonable to anticipate that efforts will be made to thoroughly explore them at the hearing."

This would indicate that the Board intends to go into the broad public interest aspects of the case as suggested by the Bureau. Under these circumstances, the Examiner feels constrained to affirm his ruling at the conference that the public interest questions raised herein are not limited to a consideration of the effect of Toolco's aeronautical activities on its control of Northeast.

The Bureau submitted a proposed statement of issues to which Toolco submitted suggested modifications and clarifications.

Thorough consideration has been given to these documents and the contentions of each party and it has been decided that the issues to be tried herein are those set forth in Appendix 1.

Eastern has also submitted a proposed statement of issues. To the extent they are germane they are covered by Appendix 1.

Requests for Evidence

The Bureau of Economic Regulation submitted a request for evidence which is attached as Appendix 2 and Toolco and Northeast submitted comments thereon.

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[4] E-17675.

[fol. 4773] Northeast, Atlas, Toolco and/or Hughes are directed to submit the material requested as modified by the following discussion, comments, and conditions:

1. The Bureau has failed to make a showing of general relevance of the material requested in C 15. That request is deleted.

2. The production of evidence in the custody of a party solely by reason of its acquisition in another pending judicial or administrative proceeding shall not be required; provided, however, that Bureau Counsel or his representative shall be privileged to examine such documents at the office of the party or its attorney and that the party shall thereafter produce copies of such documents as shall then be designated by Bureau Counsel.

3. The production of evidence [constituting] *which Examiner determines* are privileged communications between attorney and client shall not be required.

4. Request C 2 will be modified by changing the comma appearing in the third line to a period and striking all the remaining words in this request.

In the event the Bureau wants any additional information about any of the companies listed in the response to C 2 it may make such a request to the Examiner.

5. C 7 will be modified to read as follows:

> "A list of witnesses which Toolco has noticed for deposition in the above litigation and a copy of the list of witnesses Toolco intends to use at trial at such time as the District Court, pursuant to its general rules, requires the filing of such information."

[fol. 4774] Eastern submitted a request for information to Hughes, Toolco, Atlas, and Northeast.

These parties are directed to furnish the following information:

1. To the extent not previously covered, a summary of the relationships of and between TWA and Northeast desired or intended by Hughes and/or Toolco.

Italicized material substituted for bracketed material.

2. A detailed summary of the plans of Hughes/Toolco regarding Toolco's stock interest in TWA.

3. A detailed summary of the circumstances surrounding the Hughes/Toolco management of TWA.

4. A detailed summary of the intentions and motives of Hughes in securing control of Northeast.

The Examiner will not require the production of the other material requested by Eastern except to the extent it is included in the material which was directed to be produced at the request of the Bureau.

MISCELLANEOUS

1. Each party shall submit so-called written or "canned" testimony with reference to his own exhibits at the same time as the exhibits referred to are submitted. Rebuttal or surrebuttal testimony shall be submitted at the time fixed for submitting that type of exhibit.

2. The proceeding will be conducted pursuant to the Standards of Practice attached hereto as Appendix 3 except as modified herein.

[fol. 4775]

PROCEDURAL DATES

1. Date for supplying information requested by the Bureau and Eastern	February 19, 1962
2. Date for exchange of direct exhibits	March 12, 1962
3. Date for exchange of rebuttal exhibits	March 26, 1962
4. Date for hearing	April 2, 1962

/s/ MERRITT RUHLEN
Merritt Ruhlen

[fol. 4776]

APPENDIX 1

Page 1 of 2 pages

STATEMENT OF ISSUES

1. Does the Board have jurisdiction over the acquisition of control of Northeast by Hughes and/or Toolco under section 408(a) of the Act?

2. Is the acquisition of control of Northeast by Hughes and/or Toolco consistent with the public interest? In resolving this issue, the following matters, among others, will be considered:

a. Is Toolco financially able to render effective support to Northeast so as to enable Northeast to provide effective competitive service?

Will the acquisition of control of Northeast by Toolco result in improved or impaired service by Northeast?

b. Will the acquisition of control of Northeast by Toolco promote sound competition among air carriers?

c. Are the terms of the acquisition and the agreements between Toolco and Northeast fair and reasonable with respect to Northeast and consistent with the policies of the Federal Aviation Act, as amended?

d. What effect, if any, will the acquisition have upon Northeast's breakeven position (including return on investment) and on its subsidy requirements, if any?

e. What effect, if any, will the acquisition have upon the employees of Northeast?

f. Whether, in connection with the acquisition and/or financing of aircraft equipment by TWA, Toolco has exercised its control over TWA in compliance

and conformity with the Board Order of October 17, 1944, in Docket 1182 (6 C.A.B. 153) as amended, and whether with respect to such acquisition and/or financing Toolco has otherwise conducted itself in a manner authorized or approved by the Federal Aviation Act of 1958, as amended, and the regulations and orders of the Board thereunder?

[fol. 4777]

APPENDIX 1
Page 2 of 2 pages

g. Whether Toolco or Hughes has already acquired control over Northeast in contravention of said Act or any regulations or orders of the Board or otherwise failed to conform to the provisions of said Act, regulations or orders?

h. What conflicts of interest, if any, will result from the acquisition?

i. What effect, if any, will the acquisition have upon the "honest, economical and efficient management" of Northeast?

j. Will operations of Northeast after the acquisition insure the highest degree of safety in air transportation?

3. Will the acquisition result in creating a monopoly and thereby restrain competition or jeopardize another carrier not a party thereto?

4. If the Board should approve the acquisition, what terms and conditions, if any, should it attach to its approval?

5. If the Board should disapprove the acquisition, what relief should be ordered in the public interest?

[fol. 4778] APPENDIX 2

—1—

REQUEST FOR EVIDENCE

A. Northeast, Atlas, Toolco and/or Hughes (as appropriate) are requested to submit the following:

1. For the period from January 1, 1959 to the close of the record in this proceeding, copies of all agreements to which any of the above persons is a party, relating in any way to any of the following subjects: (1) the financial condition of Northeast; (2) efforts to secure flight equipment for Northeast; (3) merger[7] of Northeast.

2. Copies of all correspondence, studies and memoranda relating in any way to any of the above subjects, for the above period. This includes documents exchanged by two or more of the above parties, those exchanged with or prepared by third parties (e.g., creditors) and documents limited to internal, intracompany use.

3. Statements setting forth the substance of any oral agreements or understandings in the nature of those specified above, for the period specified above, the date or dates of any such agreements or understandings, and the persons who participated therein. If there are no such agreements or understandings, statements to that effect should be made.

4. For the above period, copies of all minutes of the boards of directors, executive committees, and any other committees of directors, officers, employees and/or stockholders, of each of the above parties, relating in any way to any of the above subjects; all reports circulated to directors or financial institutions or presented at board meetings during this period and relating to these subjects.

—2—

[fol. 4779] 5. Copies of any communications during the above period of all of the above persons to or from their stockholders concerning any of the above matters, to the

[7] For convenience, "merger" is used throughout this request in a non-technical sense, and is intended to encompass any transaction by which control of the stock, assets or operating rights of an air carrier would pass from one person or group to another.

extent not called for by other items herein. This includes, among other things, annual and interim reports, proxy material, etc.

6. Lists of all stockholders of record of each company owning one per cent or more of the outstanding capital stock, stock warrants, stock rights, or other equity interest, showing the names, addresses and the amount, percentage, and classes of interest held by each. The lists should indicate the name and address of each beneficial owner, where such information is in the knowledge of the company; in each instance where, to the knowledge of the company, the holder or owner of record is not the beneficial owner, such fact should be stated. The total amount of each type of equity interest (1) authorized and (2) outstanding should be shown for each company. These lists may be prepared as of the latest available record date, and should be accompanied by statements from responsible officials of each company to the effect that no other person holds an interest of one per cent or more at present.

7. Lists of all outstanding options to purchase stock held by directors, officers, principal employees or counsel of each company, showing the amounts held by each and the date acquired. These lists should also show any individuals who are not officers or directors, who beneficially own options to purchase 1,000 or more shares.

—3—

[fol. 4780] 8. Copies of the articles of incorporation and by-laws of each company, including all amendments thereof.

9. Lists showing all debt and equity holdings (record and beneficial) of all officers and directors of Atlas, Northeast and Toolco in all of the companies.[8]

10. Detailed balanced sheets and income statements for each company for the year ending December 31, 1961, unless such statements are already on file with the Board at the direct exhibit date.

11. Show in full detail all flight equipment and ground facilities of Northeast, not now owned, leased or on order,

[8] For example, Northeast should show the interests held by each of its officers and directors in Northeast, Atlas and Toolco,

which would be purchased or leased if the acquisition were approved; indicate, to the extent available, dates of delivery or completion, acquisition prices and terms of finance.

12. Show in full detail estimated capital requirements of Northeast for the year 1962, together with the plans for financing such requirements if the acquisition is (1) approved and (2) disapproved.

13. In the event the acquisition is disapproved, what plans exist for financing Northeast's existing operations? Submit copies of all correspondence, memoranda, studies, analyses, surveys and reports prepared by, for or concerning Northeast since January 1, 1959, relating to Northeast's ability to carry on its existing operations.

14. Show in detail any additions, subtractions, or changes in schedules which are contemplated, assuming the acquisition is (1) approved and (2) disapproved. The detail should include frequencies, stops, equipment types, and salable seating capacities available.

—4—

[fol. 4781] 15. To the extent that the cash flow projection furnished in answer to Item B8 is inadequate to meet the payment schedule required by agreements to which Northeast is a party, Northeast and Toolco should furnish detailed plans for making such payments.

16. List all payments to or receipts from Northeast by Atlas and/or Toolco for the period January 1, 1959, to the date of final decision in this proceeding, giving the date and amount of each such transaction. Payments or receipts after the direct exhibit date in this proceeding should be reported within five days of the date of payment.

17. A detailed narrative statement setting forth the basis for determining (1) the terms of the Purchase Agreement dated December 28, 1961, and (2) the renegotiation of the Loan Agreement of May 14, 1960, which is contained in the Financial Assistance Agreement. This should include the history of the negotiations from their inception to culmination, citing the terms and conditions of any offers and counteroffers, which were rejected and the reasons for such rejection. All drafts of suggested agreements or portions

thereof, whether or not finally agreed upon by the parties, should be furnished.

18. To the extent not otherwise supplied in responses to these Requests, copies of all documents filed with the Securities and Exchange Commission, heretofore and hereafter, in connection with the acquisition.

19. Copies of the transcript of hearing before the SEC, if a hearing is held, in connection with the acquisition.

—5—

[fol. 4782] 20. State which, if any, employees of Northeast presently have contracts of employment with the company, the principal terms of such contracts, and their termination dates.

21. A copy of the employment contract which is proposed to be offered to Northeast's President.

B. Northeast is requested to submit the following:

1. Book, market, net tangible asset and estimated liquidation values of the common stock of Northeast, as of the following dates (or the closest available prior dates): May 14, 1960, December 1, 1961, and December 28, 1961. For each date, show the stock values under each of the following assumptions: (1) that the debt interests of Atlas and Toolco are treated as debt; and (2) that these interests are treated as equity.

2. An itemized list of its secured debt, indicating the amount, class, identity of holder, principal and interest overdue as of December 31, 1961, payment schedule required by contract, and payment schedule estimated or proposed if the acquisition is (1) approved and (2) disapproved.

3. Copies of all outstanding credit agreements, guarantees, indentures and/or other debt instruments, including all amendments and moratorium agreements thereto.

4. Furnish the documentation and other information called for in Items B2 and B3 above, for all unsecured notes having a duration of more than 12 months.

—6—

[fol. 4783] 5. An itemized list of all trade debts of $10,000 or more, showing amount of principal and interest, name and address of creditor, payment schedule required by contract, payment schedule estimated or proposed if the acquisition is (1) approved and (2) disapproved. Age the total trade debt, and each individual debt of $25,000 or more, as follows: portion due less 3 months, portion due 3-6 months, portion due 6-12 months, portion due more than 12 months. This information should be furnished as of December 31, 1961, together with a schedule showing any payments on that portion of the debt due more than 3 months, which have been made or will be made in 1962.

6. List all trade creditors who have agreed to postpone collection of their accounts by the methods described in paragraph 2 of the Financial Assistance Agreement. Identify each such creditor, show total amount of account, portion as to which collection has been postponed, and method of repayment agreed upon.

7. Detailed *pro forma* balance sheets as of December 31, 1962 assuming the acquisition is (1) approved and (2) disapproved.

8. Cash flow projections for the year 1962, by month, based upon Northeast's exhibits in the *New York-Florida Renewal Case*, Docket 12285 *et al.*, assuming the acquisition is (1) approved and (2) disapproved.

9. State what the anticipated amount of seven days' cash operating expenses is or will be (as defined in paragraph 3 of the Financial Assistance Agreement), for the period December 1, 1961 to March 15, 1962.

—7—

[fol. 4784] C. Toolco and/or Hughes (as appropriate) are requested to submit the following:

1. Requests A1 through A5 are incorporated herein and repeated as to the period January 1, 1955 to the close of the record herein, for materials relating in any way to any of the following subjects: (1) [efforts to secure financial assistance for] *the financial condition of* TWA; (2) design, manufacture, acquisition and/or disposal of flight equipment for

Italicized material substituted for bracketed material.

Toolco or TWA; and (3) mergers involving TWA. Any such material in Toolco's possession should be furnished, whether or not prepared by Toolco.

2. A complete list of all enterprises in which Hughes or any of his companies holds any financial interest, including the name and a brief description of each enterprise, the nature and amount of the interest held, and the percentage of the total class of such interest which the holding of Hughes and his companies represents.

3. Identify the persons who will be in control of Northeast, and/or managing its operations, if the acquisition is approved, including, but not limited to, the contemplated officers, directors, executive committee and general counsel.

4. A detailed statement of Toolco's plans for financing the operations of Northeast in the future, if Northeast's certificate for service south of New York is (1) renewed, (2) not renewed.

5. Copies of all depositions taken or being taken in *TWA* v. *Hughes, et al.*, S. D. N. Y., C. A. 61-2324.

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[fol. 4785] 6. Copies of all pleadings and briefs filed in the above litigation, and all court orders issued therein.

7. A list of witnesses to be used by Toolco or made available for depositions by TWA in the above litigation.

8. Copies of all press releases published by Toolco and/or Carl Byoir and Associates relating in any way to Atlas, Northeast, General Dynamics Corp., or TWA, from January 1, 1959 to the close of the record in this proceeding.

9. A copy of the transcript of a meeting held June 2, 1961 between Toolco's General Counsel and representatives of TWA, involving certain Convair aircraft.[9]

10. All correspondence between Hughes and/or Toolco and Carter L. Burgess, Lamont Cohn, Warren Lee Pierson, or Charles S. Thomas relating in any way to any of the following subjects: terms, conditions and tenure of employ-

[9] Material of this type is within the scope of Item C1; this transcript is specifically identified in a separate item for the convenience of Toolco.

ment, and rights, duties and powers of office of Burgess, Pierson or Thomas. Copies of any employment contracts covering them.

11. A complete list of all transactions having a value of $50,000 or more in any calendar year, between any of the enterprises listed in Item C2, on the one hand, and The Boeing Company, General Dynamics Corp., Lockheed Aircraft Corp., or any of the subsidiaries or affiliates of any of these companies, on the other hand.

12. A list of all commercial aircraft negotiated for, ordered, and/or purchased or leased by Toolco and/or TWA, for the period January 1, 1955 to the direct exhibit date. The list should show number, type and dollar value of

—9—

[fol. 4786] aircraft, identity of seller, date of first contact with seller regarding possible purchase, date of placing firm order or terminating negotiations, date of delivery or cancellation of order, price and terms of finance.

13. A list of all commercial aircraft sold, leased or offered for sale or lease by Toolco during the period listed in Item C12. The list should show number, type and dollar value of aircraft, identity of purchaser, date of first contact with purchaser regarding possible sale, date of receiving firm order or termination of negotiations, date of delivery or cancellation of order, price and terms of finance.

14. A list of all exchanges of correspondence, telephone conversations, personal meetings and other communications between Chester C. Davis, Raymond Cook and/or Raymond Holliday, on the one hand, and Howard R. Hughes, on the other hand, for the period from January 1, 1961 to the direct exhibit date, with brief descriptions of the subject matter of such communications.

15. Federal income tax returns of Toolco for the years 1955-1961.

16. A list of the officers and directors of Toolco, showing the date each entered into office.

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[fol. 4787] 17. List all past presidents of TWA since 1939, giving the dates of commencement and termination of

employment of each, and a detailed statement of the reasons for termination which were given at the time by (1) the TWA president and (2) Hughes and/or Toolco.

18. For the period January 1, 1955-December 31, 1960, list and describe all instances in which aircraft suitable for commercial use were held by Hughes and/or Toolco and not available for use by TWA. This should include aircraft which may have been borrowed or leased from TWA by Hughes and/or Toolco, as well as aircraft types owned by Hughes and/or Toolco but suitable for commercial use by TWA.

19. For the period January 1, 1955-December 31, 1960, list all officers, directors and employees of TWA who were concurrently also employed by, or received compensation from, Hughes and/or Toolco. This list should show names, titles of positions held, dates of commencement and termination of employment by TWA and/or Hughes/Toolco, and reasons for termination of employment.

/s/ PAUL Y. SELIGSON
Paul Y. Seligson
Bureau Counsel

Washington, D. C.

January 22, 1962

[fol. 4788]

APPENDIX 3
Page 1

STANDARDS OF PROCEDURE IN ECONOMIC PROCEEDINGS[1]

PREAMBLE: The Purpose of the Following Standards of Procedure is to Limit the Expense of Litigation to All Parties and the Government and to Reduce Delay in Processing for the Benefit of All Concerned Including the General Public.

PREHEARING PRACTICE

1. *Evidence.* All evidence, including the testimony of witnesses, shall be prepared in written exhibit form and shall be served at dates designated by the Examiner in ad-

[1] These standards do not apply to economic enforcement and safety proceedings.

vance of the hearing. Evidence as to events occurring after the exhibit-exchange dates shall be presented by a revision of exhibits.[2]

Witnesses cognizant of the exhibits shall be made available for cross-examination. However, witnesses will not be permitted to read prepared testimony into the record.

The evidentiary record shall be limited to factual material. Argument will not be received in evidence but rather should be presented in the briefs or in the statement of position (see Paragraph 6 *infra*).

2. *Exhibits.* Information responses and exhibits shall be exchanged on prescribed dates prior to the hearing. Two copies shall be sent to each party and one to the Examiner,[3] provided, however, that civic and state interests need not serve exhibits on other cities and states or on air carriers which have not applied for service to such city or state unless specifically requested by the party interested, and air carriers need not serve exhibits upon cities and states not included within their applications unless specifically requested to do so.

Page 2

[fol. 4789] The exhibits shall include appropriate footnotes or narrative explaining the source of the information used and the methods employed in statistical compilations and estimates. In the case of rebuttal exhibits they shall refer specifically to the exhibits being rebutted. Each party shall submit a list of its exhibits appropriately indexed as to number and title prior to the hearing. Where one part of a multi-page exhibit is based upon another part, appropriate cross-references shall be made. For example, a profit-and-loss forecast based on detailed estimates appearing on other pages should contain specific references showing which pages support the different individual items of the forecast. Such exhibits shall be arranged in an organized manner in accordance with the party's theory of the case.

All exhibits shall comply with the requirements of Rule 3 (b) of the Board's Rules of Practice as to form.

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[2] It is recognized that evidence from a party's witness who is or may become hostile cannot be reduced to writing.

[3] This should not be confused with the requirement for filing an original and 19 copies of formal papers such as motions, applications, etc.

3. *Title.* The principal title of each exhibit should state precisely what it contains and may also contain a statement of the purpose for which the exhibit is offered. However, such statements will not be considered as part of the evidentiary record.

4. *Cooperation on Basic Data.* Parties having like interests are specifically encouraged to cooperate with each other in joint presentations of such items as basic data compiled from such sources as the O and D surveys and any other evidence susceptible to joint presentation. Duplicate presentation of the same evidence should be avoided. The parties should be prepared to discuss this matter at the Prehearing Conference with a view toward reaching agreement thereat.

[fol. 4790] 5. *Authenticity.* The authenticity of all documents submitted as proposed exhibits in advance of the hearing shall be deemed admitted unless written objection thereto is filed prior to the hearing, except that a party will be permitted to challenge such authenticity at a later time upon a clear showing of good cause for failure to have filed such written objection. (E.g., absent objection, if an exhibit purporting to be a copy of a letter mailed on a certain date were submitted, it would not be necessary to prove such mailing or the accuracy of the copy.)

6. *Statement of Position or Trial Brief.* A written statement of position should be exchanged by all counsel with copies to all other parties prior to the beginning of the hearing, provided however, that Bureau Counsel may offer its statement of position at the time it presents its affirmative case. This statement shall include a showing of the party's theory of the case and shall not be subject to cross-examination. In the major proceedings a more detailed trial brief may be required by the Examiner.

Hearing

7. *Order of Presentation.* Normally, the order of procedure in presenting cases at the hearing will be in alphabetical order in each of the following categories:

(1) City and state interests and government departments,

(2) Applicants,

(3) Other parties except Bureau Counsel, and

(4) Bureau Counsel.

However, where the proceeding is instituted by order to show cause or order of investigation or at the instigation of a third party, the proponent of said order shall proceed first.

Page 4

[fol. 4791] Each party shall develop the hearing record on direct examination in logical order. Normally, rebuttal shall be presented at the same time as the direct case.

8. *Requirement for Submission of Corrected Copies of Exhibits.* Each party shall present at the hearing three fully corrected copies of its exhibits received in evidence, two for the docket and one for the Examiner.

9. *Cross-Examination.* Cross-examination shall be limited to the scope of the direct examination and, except for Bureau Counsel, to witnesses whose testimony is adverse to the party desiring to cross-examine—this being intended specifically to prohibit so-called "friendly cross-examination."

Second rounds of cross-examination will not be presented. Cross-examination of any particular witness shall be limited to one attorney for each party.

10. *Motions.* Oral presentation on any motion or objection shall be limited to the party or parties making the motion or objection and the party or parties against which the motion or objection is directed. Such presentations shall also be limited to one attorney for each party.

11. *Offer of Exhibits in Evidence.* The exhibits sponsored by each witness shall be offered in evidence at the close of his direct examination for ruling by the Examiner prior to cross-examination.

12. *Official Notice and Stipulation.* Documentary material of the type proposed for stipulation by the Bureau

of Economic Regulation is an appropriate subject for official notice but parties either using stipulated material or requesting official notice shall make specific references to the page and paragraph of such material.

Page 5

[fol. 4792] *Exceptions.* The foregoing standards are deemed consistent with the orderly conduct of economic proceedings. Exceptions to any standard should be raised at the Prehearing Conference and may be allowed upon good cause shown or upon the initiative of the Examiner.

[fol. 4793]

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

TOOLCO-NORTHEAST CONTROL CASE

DOCKET 11620

NOTICE OF HEARING

Notice is hereby given pursuant to the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding is assigned to be held on April 2, 1962, at 10:00 a.m. (local time), in Room 725, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C., before Examiner Merritt Ruhlen.

Without limiting the scope of the issues to be considered, particular attention will be directed to the following matters:

1. Whether the Board has jurisdiction over the acquisition of control of Northeast by Hughes and/or Toolco under section 408(a) of the Act?

2. Whether the acquisition of control of Northeast by Hughes and/or Toolco is consistent with the public interest? In resolving this, the following matters will be considered:

(a) Is Toolco financially able to render effective support to Northeast so as to enable Northeast to provide effective competitive service?

Will the acquisition of control of Northeast by Toolco result in improved or impaired service by Northeast?

(b) Will the acquisition of control of Northeast by Toolco promote sound competition among air carriers?

[fol. 4794] (c) Are the terms of the acquisition and the agreements between Toolco and Northeast fair and reasonable with respect to Northeast and consistent with the policies of the Federal Aviation Act, as amended?

(d) What effect, if any, will the acquisition have upon Northeast's breakeven position (including return on investment) and on its subsidy requirements, if any?

(e) What effect, if any, will the acquisition have upon the employees of Northeast?

(f) Whether, in connection with the acquisition and/or financing of aircraft equipment by TWA, Toolco has exercised its control over TWA in compliance and conformity with the Board Order of October 17, 1944, in Docket 1182 (6 C.A.B. 153), as amended, and whether with respect to such acquisition and/or financing Toolco has otherwise conducted itself in a manner authorized or approved by the Federal Aviation Act of 1958, as amended, and the regulations and orders of the Board thereunder?

(g) Whether Toolco or Hughes has already acquired control over Northeast in contravention of said Act or any regulations or orders of the Board or otherwise failed to conform to the provisions of said Act, regulations or orders?

(h) What conflicts of interest, if any, will result from the acquisitions?

(i) What effect, if any, will the acquisition have upon the "honest, economical and efficient management" of Northeast?

(j) Will operations of Northeast after the acquisition insure the highest degree of safety in air transportation?

3. Whether the acquisition will result in creating a monopoly and thereby restrain competition or jeopardize another carrier not a party thereto?

4. Whether the Board should approve the acquisition and what terms and conditions, if any, should it attach to its approval?

[fol. 4795] 5. Whether the Board should disapprove the acquisition and what relief should be ordered in the public interest?

For further details of the issues involved in this proceeding, interested persons are referred to the applications and any amendments thereto, petitions, motions, and orders entered in the docket of this proceeding, all of which are on file with the Civil Aeronautics Board.

Notice is further given that any person other than parties of record desiring to be heard in this proceeding should file with the Board, on or before April 2, 1962, a statement setting forth the issues of fact or law to be presented.

Dated at Washington, D. C., March 9, 1962.

/s/ MERRITT RUHLEN
Merritt Ruhlen
Hearing Examiner

(SEAL)

[fol. 4796] DOCKET No. 11620

[Stamp—Proof of Service—I hereby certify that on March 12, 1962 this Document was served on parties listed below: —B. L. Dudley, Service & Mail Clerk]

NOTICE OF HEARING

CERTIFIED

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Clifton B-22
Brown B-100
B-10
Examiner: Ruhlen Room 729
Bureau Counsel:
Seligson B-72
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Alderson Reporting Company

Directorate of Transportation, DCS
Headquarters, USAF
Washington 25, D. C.

[fol. 4799]

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

TOOLCO-NORTHEAST CONTROL CASE

DOCKET 11620 et al.

INITIAL DECISION OF EXAMINER MERRITT RUHLEN
Served: May 8 1962

Upon:

Chester C. Davis, 120 Broadway, New York 5, New York, for Hughes Tool Company.

John C. Meleney, 120 Broadway, New York 5, New York, for Northeast Airlines, Inc., and Atlas Corporation.

Clarence I. Peterson, 10 Post Office Square, Boston, Massachusetts, for Northeast Airlines, Inc.

James H. Bratton, Jr., 825 C & S Bank Building, Atlanta 3, Georgia, for Eastern Air Lines, Inc.

Andrew T. A. MacDonald, 729 Fifteenth Street, N.W., Washington 5, D. C., for National Airlines, Inc.

Paul Y. Seligson, Civil Aeronautics Board, Washington 25, D. C., for the Bureau of Economic Regulation.

This initial decision is rendered pursuant to the authority delegated to Examiners under Rule 27 of the Rules of Practice in Economic Proceedings. It becomes effective as the final order of the Board 30 days after service thereof unless a petition for discretionary review is filed within 14 days after service thereof in accordance with Rule 28, or the Board issues an order within said 30-day period to review upon its own initiative. If a petition for discretionary review is timely filed or action to review is taken by the Board upon its own initiative, the effectiveness of this initial decision is stayed until further order of the Board. If such petition for review is filed, any opposing party may within 7 days after service thereof, file an answer thereto, pursuant to section 28(b) of the Rules of Practice.

[fol. 4800]

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

TOOLCO-NORTHEAST CONTROL CASE

DOCKET 11620 et al.

INITIAL DECISION OF EXAMINER MERRITT RUHLEN

1. Northeast will collapse and cease operations unless financial assistance is obtained immediately. (28-29)

2. No assistance is available to Northeast either in the form of temporary subsidy or in a reorganization pursuant to Chapter X of the Bankruptcy Act. (29-31)

3. The record will not support a finding that Toolco engaged in improper or unlawful activities in its relationships with TWA or Northeast. (33)

4. Toolco has not unlawfully acquired control of Northeast. (33-35)

5. Control of Northeast by Toolco will not restrain competition. (36)

6. Transactions between Toolco's other aeronautical enterprises and Northeast not adverse to the public interest if subject to specific limitations and restrictions. (36-37, 41-42)

7. Acquisition of Northeast by Toolco approved subject to certain conditions. (41-42)

Appearances:

Chester C. Davis and *Paul A. Porter* for Hughes Tool Company.

John C. Meleney and *Herbert F. Kahler* for Atlas Corporation.

John C. Meleney and *Clarence I. Peterson* for Northeast Airlines, Inc.

James H. Bratton, Jr., Harold L. Russell, and *E. Smythe Gambrell* for Eastern Air Lines, Inc.

Andrew T. A. MacDonald, John W. Cross, and *Jerome A. Barron* for National Airlines, Inc.

Paul Y. Seligson and *William F. Rosenblum, Jr.,* for the Bureau of Economic Regulation.

[fol. 4801]

TOOLCO-NORTHEAST CONTROL CASE

DOCKET 11620 *et al.*

INITIAL DECISION OF MERRITT RUHLEN, HEARING EXAMINER

This proceeding involves the question whether Hughes Tool Company (Toolco) has acquired control of Northeast Airlines, Inc., or contracted to acquire such control, and, if so, whether such control should be approved. This proceeding was instituted by the Board on July 12, 1960,

to determine whether Howard R. Hughes, Toolco, Trans World Airlines, Inc., or any or all of them had acquired control of Northeast.[1] Thereafter, following numerous procedural steps, including several orders of the Board, as hereinafter set forth, the Board consolidated an application, Docket 13328, of Toolco, Northeast, and Atlas requesting approval of the acquisition of control of Northeast by Toolco. Eastern Air Lines, Inc., National Airlines, Allegheny Airlines, Inc., and Mohawk Airlines, Inc., have been made parties to this proceeding.

A hearing in this proceeding was held in Washington, D. C., from April 2 to April 20, 1962. Briefs were filed by Toolco, Northeast, National, Eastern, and the Bureau of Economic Regulation.

[fol. 4802]

ISSUES

The basic issues in this proceeding arose under section 408(a) and (b) of the Act.[2]

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[1] Order E-18061.

[2] "(a) It shall be unlawful unless approved by order of the Board as provided in this section—

"(1) For two or more air carriers, or for any air carrier and any other common carrier or any person engaged in any other phase of aeronautics, to consolidate or merge their properties, or any part thereof, into one person for the ownership, management, or operation of the properties theretofore in separate ownerships;

"(2) For any air carrier, any person controlling an air carrier, any other common carrier, or any person engaged in any other phase of aeronautics, to purchase, lease, or contract to operate the properties, or any substantial part thereof, of any air carrier;

"(3) For any air carrier or person controlling an air carrier to purchase, lease, or contract to operate the properties, or any substantial part thereof, of any person engaged in any phase of aeronautics otherwise than as an air carrier;

"(4) For any foreign air carrier or person controlling a foreign air carrier to acquire control, in any manner whatsoever, of any citizen of the United States engaged in any phase of aeronautics;

"(5) For any air carrier or person controlling an air carrier, any other common carrier, or any person engaged in any other

[fol. 4804] At the prehearing conference and in the supplemental prehearing conference report the issues were set forth as follows:

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phase of aeronautics, to acquire control of any air carrier in any manner whatsoever;

"(6) For any air carrier or person controlling an air carrier to acquire control, in any manner whatsoever, of any person engaged in any phase of aeronautics otherwise than as an air carrier; or

"(7) For any person to continue to maintain any relationship established in violation of any of the foregoing subdivisions of this subsection.

[fol. 4803] "(b) Any person seeking approval of a consolidation, merger, purchase, lease, operating contract, or acquisition of control, specified in subsection (a) of this section, shall present an application to the Board, and thereupon the Board shall notify the persons involved in the consolidation, merger, purchase, lease, operating contract, or acquisition of control, and other persons known to have a substantial interest in the proceeding, of the time and place of a public hearing. Unless, after such hearing, the Board finds that the consolidation, merger, purchase, lease, operating contract, or acquisition of control will not be consistent with the public interest or that the conditions of this section will not be fulfilled, it shall by order approve such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe: Provided, That the Board shall not approve any consolidation, merger, purchase, lease, operating contract, or acquisition of control which would result in creating a monopoly or monopolies and thereby restrain competition or jeopardize another air carrier not a party to the consolidation, merger, purchase, lease, operating contract, or acquisition of control: Provided further, That if the applicant is a carrier other than an air carrier, or a person controlled by a carrier other than an air carrier or affiliated therewith within the meaning of section 5(8) of the Interstate Commerce Act, as amended, such applicant shall for the purposes of this section be considered an air carrier and the Board shall not enter such an order of approval unless it finds that the transaction proposed will promote the public interest by enabling such carrier other than an air carrier to use aircraft to public advantage in its operation and will not restrain competition: Provided further, That, in any case in which the Board determines that the transaction which is the subject of the application does not affect the control of an air carrier directly engaged in the operation of aircraft in air transportation, does not result in creating a monopoly, and does not tend to restrain competition, and deter-

1. Does the Board have jurisdiction over the acquisition of control of Northeast by Hughes and/or Toolco under section 408(a) of the Act?

2. Is the acquisition of control of Northeast by Hughes and/or Toolco consistent with the public interest? In resolving this issue, the following matters, among others, will be considered:

(a) Is Toolco financially able to render effective support to Northeast so as to enable Northeast to provide effective competitive service?

Will the acquisition of control of Northeast by Toolco result in improved or impaired service by Northeast?

(b) Will the acquisition of control of Northeast by Toolco promote sound competition among air carriers?

(c) Are the terms of the acquisition and the agreements between Toolco and Northeast fair and reasonable with respect to Northeast and consistent with the policies of the Federal Aviation Act, as amended?

(d) What effect, if any, will the acquisition have upon Northeast's breakeven position (including return on investment) and on its subsidy requirements, if any?

(e) What effect, if any, will the acquisition have upon the employees of Northeast?

(f) Whether, in connection with the acquisition and/or financing of aircraft equipment by TWA, Toolco has exercised its control over TWA in compliance and conformity with the Board Order of October 17, 1944, in Docket 1182 (6 C.A.B. 153) as amended, and whether

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mines that no person disclosing a substantial interest than currently is requesting a hearing, the Board, after publication in the Federal Register of notice of the Board's intention to dispose of such application without a hearing (a copy of which notice shall be furnished by the Board to the Attorney General not later than the day following the date of such publication), may determine that the public interest does not require a hearing and by order approve or disapprove such transaction."

with respect to such acquisition and/or financing Toolco has otherwise conducted itself in a manner authorized or approved by the Federal Aviation Act of 1958, as amended, and the regulations and orders of the Board thereunder?

[fol. 4805] (g) Whether Toolco or Hughes has already acquired control over Northeast in contravention of said Act or any regulations or orders of the Board or otherwise failed to conform to the provisions of said Act, regulations or orders?

(h) What conflicts of interest, if any, will result from the acquisition?

(i) What effect, if any, will the acquisition have upon the "honest, economical and efficient management" of Northeast?

(j) Will operations of Northeast after the acquisition insure the highest degree of safety in air transportation?

3. Will the acquisition result in creating a monopoly and thereby restrain competition or jeopardize another carrier not a party thereto?

4. If the Board should approve the acquisition, what terms and conditions, if any, should it attach to its approval?

5. If the Board should disapprove the acquisition, what relief should be ordered in the public interest?

Early in the hearing, it became apparent that Northeast Airlines was in a very precarious financial situation and it would be forced to cease operation unless help from Toolco was obtained. Under the circumstances, it was decided that it would be a waste of time and effort to investigate the efficiency and economy of Toolco's previous operations and it was ruled that no evidence would be received upon the economy and efficiency of the Toolco management. It was expressly stated, however, that evidence would be received on the effect of Toolco's other aeronautical activi-

ties upon its control of Northeast, any dishonest or improper self dealing between Toolco and either TWA or Northeast, any violations of the law or the Board's orders or regulations, including any attempts to create a monopoly or restrain competition.

[fol. 4806] Eastern and National apparently contend that the refusal to receive evidence on the economy and efficiency of the acquiror's management while receiving evidence on the honesty and lawfulness of the acquiror's prior operations is illogical and inconsistent.

To permit a person who may operate uneconomically or inefficiently to acquire an air carrier may in the long run, impair air transportation but in the present situation to refuse means a greater impairment, the cessation of Northeast's service now. On the other hand, to permit a dishonest person to obtain control of an air carrier might result in depriving persons both within and without the acquired carrier of substantial legal and equitable rights. To permit a person who operates unlawfully to acquire an air carrier could make all air regulation ineffective. The public interest in excluding dishonest or illegal actions by persons controlling an airline could outweigh the public interest in keeping Northeast alive.

Northeast

Northeast was organized by the Boston and Maine Railroad and Maine Central Railroad to provide supplemental air service in the New England area. Regularly scheduled operations were commenced in 1933. It later was awarded additional routes and prior to 1956 was a local or regional carrier serving approximately 30 communities throughout the New England area, plus routes between Boston and New York and Boston and Montreal. In 1956, Northeast was certificated to provide air service between Boston, New [fol. 4807] York, Philadelphia, and Washington/Baltimore on the one hand, and Jacksonville, Tampa, and Miami/Fort Lauderdale, on the other.[3] This certificate was awarded for a temporary period of five years.

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[3] *New York-Florida Case*, 24 C.A.B. 94 (1956).

Northeast now serves a total of 37 cities on its expanded system. Although its five major cities, New York, Boston, Washington, Miami, and Philadelphia generate 80 percent of its passenger volume, it has continued its local service operations in the New England area and is the only air carrier providing air service between 29 New England communities and the metropolitan areas of Boston and New York. Many of such communities, (Presque Isle, Bangor, Keene, and New Bedford) are without rail facilities for passenger transportation. During the period since 1956, Northeast's traffic has increased substantially. The following table summarizes the growth from 1956 through the first nine months of 1961.

Northeast Traffic Growth—1956-1961

(000)

	1956	1957	1958	1959	1960	9 months 1961
Available seat miles	203,844	517,730	860,690	1,031,546	1,096,763	1,137,047
Passenger load factor	58.5%	47.4%	47.3%	50.3%	51.5%	51.6%
Revenue passenger miles	119,253	245,182	407,116	519,123	565,031	586,927
Operating revenues	$8,688	$14,939	$24,353	$31,450	$37,931	$40,110

During 1957, Northeast commenced services on its Florida route with ten new DC-6B aircraft. In addition, an agreement was reached with Bristol Aircraft Limited for the [fol. 4808] delivery of five Bristol Britannia turbo-prop aircraft for use on the Florida routes. Delivery was to commence in September 1957, but was not made for reasons beyond the control of Northeast. The agreement was terminated by mutual consent.

In 1958, Northeast acquired a fleet of ten Viscount 745 turbo-prop aircraft from Vickers-Armstrongs (Aircraft) Limited. These aircraft were put into service in the Boston, New York, Philadelphia, and Washington commuter markets during the latter part of 1958. During 1959, commuter schedules were supplemented with DC-6B aircraft. Regu-

larly scheduled commuter air service was extended in 1959 to an hourly basis in the Boston, New York, and Washington markets. During the period 1957 through the first nine months of 1961, Northeast generated traffic in the commuter markets as follows:

Enplaned and Deplaned Passengers
Northeast—Commuter Markets

	1957	1958	1959	1960	First 9 months 1960	First 9 months 1961
BOS–NYC	64,222	91,885	164,954	268,210	222,950	246,180
BOS–PHL	10,040	52,418	82,513	85,754	71,840	73,210
BOS–DCA	12,609	40,691	107,379	128,832	90,022	120,629
NYC–DCA	1,624	25,820	99,083	163,961	118,359	165,667
	88,504	210,814	453,929	646,757	503,171	605,686

In August of 1959, Northeast leased one Boeing 707 from TWA to provide six weekly daytime round trips between New York and Miami commencing on or about December 1, 1959. This equipment was operated by Northeast with crews trained by TWA. This lease arrangement remained in effect through April 30, 1961, and during a part of the 1960-61 winter season the arrangement was expanded to [fol. 4809] provide additional flights departing from New York on Saturday morning. The following table summarizes the result of these operations by Northeast.

Northeast 707 Operations in Florida Market

	1960	1961 (5 mos.)
Available seat miles	112,672M	38,207M
Revenue passenger miles	74,720M	26,001M
Load factor	66.3%	68.1%
Gross revenues	$ 4,769M	$ 1,802M

At present, Northeast owns six DC-3's, ten DC-6's, and ten Viscounts, and in addition leases six Convair 880's from the manufacturer on a seven-year basis. The 880's are used on Northeast's Florida route, the Viscounts are used for commuter flights between Boston, Philadelphia, and Washing-

ton, the DC-6's supplement the systemwide services, and the DC-3's provide local service in the New England area.

On April 31, 1961, Northeast applied for a permanent certificate for the Florida route and now operates this route pursuant to section 9(b) of the Administrative Procedure Act.

On or about the time Northeast commenced service in 1957 on its Florida route with DC-6B aircraft, it became convinced that jet aircraft were needed for this route. In the meanwhile, Eastern and National initiated services on the Florida route with Electra equipment and in late 1958 National instituted 707 service with jet aircraft leased from Pan American. Northeast attempted to purchase jet equipment, but was unsuccessful. It was unable to obtain conventional financing and/or obtain financing from the manufacturers of such aircraft.

[fol. 4810] In March 1959, discussions were commencing with Trans Caribbean Airways about a Boeing 707 aircraft and the leasing of such aircraft on a divided time basis. These discussions continued into April when the Boeing 707 was withdrawn from the market and the discussions languished. At about the same time, Toolco, which then controlled TWA, informed Northeast that it had ten jet aircraft on order from General Dynamics surplus to TWA's existing and foreseeable requirements. Toolco suggested that three of such aircraft might be made available to Northeast. Northeast due to the short term nature of its Florida certificate was interested in only short term leases of such aircraft from Toolco. In these negotiations, it was suggested that Atlas invest a substantial amount of money in a leasing corporation to handle the lease by Toolco to Northeast. No feasible plan could be agreed upon and the negotiations were dropped.

In September 1959, Northeast attempted to lease 880 aircraft from General Dynamics. These discussions continued through the balance of 1959 and tentative arrangements were made in January 1960, which would have provided for the lease by Northeast of six 880-M's for a period of seven years, but at that time, it became apparent that deliveries could not be made as early as anticipated. In

the same agreement, it was provided that Atlas would be called upon to provide Northeast with funds sufficient to enable it to continue its operations at least until June 30, 1961. Inquiries were then commenced to determine whether any of the Toolco planes on order from General Dynamics [fol. 4811] could be turned over to Northeast for earlier delivery than those on the assembly line proposed for Northeast.

By early 1960, Northeast was facing substantial financial difficulties. For the period 1957 through 1959, Northeast had an operating deficit of $13,675,000 and a net deficit of $15,056,000 despite subsidy receipts of $4,311,000. As of December 31, 1959, Northeast had current assets of $8,262,000, current liabilities of $14,132,000 and a negative net worth of $3,139,000. Atlas had invested $18,953,552 in the form of $6,661,460 in common stock and $12,292,092 in subordinated demand notes; $16,197,168 of which was invested during the period November 1956 through December 31, 1959. Atlas found itself in a position where it could no longer give substantial financial assistance to Northeast. At the same time, the conversion to jet operations would require an additional $8 million to $10 million if deliveries commenced in the summer of 1960. Each months delay in delivery would increase the amount of capital funds needed by approximately $1 million. Consequently, Atlas and Northeast, in addition to looking for early delivery of jets, attempted to find additional financial assistance.

During January 1960, some consideration was given to the possibility that funds required by Northeast might be raised by a public offering of securities. It was decided that such an offering would not be feasible unless underwritten by Atlas and Atlas concluded that it could not underwrite an offering of the size required. At the same [fol. 4812] time, Northeast's lending banks indicated further debt financing would not be feasible without guarantees or other like security for additional loans. Similarly, General Dynamics and General Electric, while willing to finance the equipment to the extent necessary for the leasing arrangements, were not willing to finance working capital as well.

In view of need for funds, Atlas and Northeast in its negotiations with Toolco with reference to the early release of jets also explored the possibility of obtaining additional funds and suggested a possible merger with TWA. Toolco, at that time, was the owner of approximately 78 percent of the outstanding stock of TWA. Merger discussions were held at that time between Toolco, Atlas, and Northeast. At approximately that time, Toolco advised Northeast that six 880's would be made available by Toolco for lease by General Dynamics to Northeast and it indicated a willingness to consider arrangements to supply Northeast with the working capital required to put jets in operation if contemporaneous considerations were given to the possibility of a Northeast-TWA merger. This basic approach was agreed to and discussions continued through April and May with reference to the amount of funds Northeast needed and appropriate conversion ratios for merger purposes. Simultaneously, Toolco agreed that, if General Dynamics would not take back the six aircraft from Toolco and lease them to Northeast, Toolco would lease them directly to Northeast on the same terms as those proposed by General Dynamics. At that time, Northeast indicated that it needed $5 to $6 million to enable it to meet the working capital requirement contained in its Credit Agreement with lending banks during the period of antici- [fol. 4813] pated inauguration of jet operations and that its requirements for preoperating expenses and spare parts and equipment not financed by manufacturers would aggregate approximately $3 million. It was thereupon agreed that Toolco would make loans to Northeast in an amount up to, but not exceeding $9,500,000. It was agreed that the first advance by Toolco in the amount of approximately $5,500,000 would be made on or before June 29, 1960. The funds made available to Northeast under the loan agreement of May 14, 1960, were as follows:

Date	Amount
June 29, 1960	$5.5 million
January 13, 1961	1.0 million
January 18, 1961	.5 million
January 30, 1961	.5 million
February 28, 1961	.5 million
April 3, 1961	.5 million
April 28, 1961	.5 million
May 29, 1961	.5 million
	$9.5 million

The proposed merger of Northeast with TWA was approved by Northeast's Board of Directors on May 16, 1960. Thereafter, the proposal was submitted to TWA on May 17, stating that Northeast was willing to enter into such an agreement prior to July 31, 1960. This date of expiration for the merger proposal was thereafter extended from time to time, with the final extended date being March 31, 1961.

On March 22, 1961, TWA requested a further extension to June 30. This request was denied by Northeast but it indicated a willingness to discuss the matter further at any time. In the meantime, TWA's jet financing program [fol. 4814] had been consummated in December 1960, which resulted in Toolco's TWA stock being put in a voting trust under the control of TWA's creditors.

Following the May 1960 transactions between Toolco, Northeast, and Atlas, by which Toolco agreed to release certain jet aircraft for Northeast, to lend Northeast money, and to attempt to merge Northeast and TWA, National on June 8, 1960, filed a petition with the Board requesting an investigation to determine whether Toolco had acquired control of Northeast. Thereafter, as previously indicated, the Board instituted this proceeding on July 12, 1960.

The lease agreement was postponed until October 31, 1960. The lease arrangements were finally concluded during the period November 14-18. The first plane was delivered on November 30, two were delivered in December, two in January, and the last delivered in February. On March 11,

1961, Northeast commenced full operation of its 880 equipment on its Florida route.

The delay in the delivery of the jets and the necessity of continuing operations on its long-haul route with piston-engine aircraft caused an additional cash drain in the jet equipment integration. During this period, Northeast continued losing money on its New England operations and its Florida operations with its piston-engine equipment, and in the spring of 1961, needed substantially more cash than originally contemplated. Atlas could not provide the needed funds. No convenient method of financing was available. To conserve cash, Northeast in April 1961, initiated a discussion with equipment secured creditors in an attempt to obtain a moratorium (1) on installments of principal owed, secured by its DC-6B's and Viscounts and (2) the rentals on the jets due General Dynamics and General Electric [fol. 4815] during 1961. Negotiations continued into June 1961, but no formal agreement was reached. The moratorium was observed informally, however, with the understanding that the situation would be reviewed from time to time and in any event on or about September 1.

On June 30, 1961, Northeast informed Toolco of these negotiations and stated that Northeast would not meet its interest payment due to Toolco on July 1. In the meantime, Northeast attempted to arrange for financing by the sale and leaseback of its DC-6B aircraft. This attempt was unsuccessful. During this period, Northeast attempted to interest Delta, Continental, Braniff, American, or Pan American in a merger with Northeast. None of these carriers, however, showed an active interest in a merger at that time.

On September 15, 1961, substantial premium payments were needed to avoid cancelling of hull and liability insurance coverage. Attempts were made to obtain this money from Toolco. On September 8, Toolco advised Atlas that Toolco would be willing to provide financial assistance to Northeast if it could be satisfied: 1. That Atlas would negotiate with Toolco in good faith for the purchase of the Atlas interest in Northeast upon fair and reasonable terms; and 2. that Toolco could be assured in a manner

satisfactory to either, (a) that the acquisition by it of a controlling interest in Northeast would be approved by the Civil Aeronautics Board, or (b) that any monies advanced would be repaid when due. Shortly thereafter, Toolco, Northeast, and Atlas discussed this problem and on September 12, representatives of Northeast and Toolco informed the Civil Aeronautics Board with reference [fol. 4816] thereto. On September 14, Atlas provided the sum of $200,000 to Northeast by pledging cash to secure a 90-day loan.

On September 22, Northeast, Atlas, and Toolco filed an application with the Board, Docket C-29, in which Toolco indicated a willingness to make limited emergency funds immediately available to Northeast if it could be assured that no laws, regulations, or orders of the Board would be violated and if it could receive some indication that the proposed acquisition by Toolco of the Atlas interest in Northeast appeared to meet the tests specified in the Federal Aviation Act and would not be inconsistent with or contrary to the policy of the Board or any order of the Board applicable to the parties. Northeast and Atlas requested confidential treatment of this application.

On September 29, the Board denied confidential treatment of the application and the application was withdrawn. Toolco was unwilling to negotiate for the acquisition of Atlas until the Board acted to indicate tentative or preliminary approval. Various other possibilities of raising additional funds for Northeast were considered at this time, but none were feasible. The financial position of Northeast continued to deteriorate and on October 13, 1961, Shell Oil Company informed Northeast that it could not continue to provide fuel and oil without payment on account. Action by Shell was deferred for three days, but on October 20, Shell informed Northeast that no more deliveries of fuel or oil would be made, except against payment. At that time, Toolco agreed to guarantee payment for fuel and oil delivered by Shell subsequent to October 20. [fol. 4817] On October 31, Northeast and Toolco requested the Board to permit Northeast to receive emergency assistance from Toolco without prejudice or penalty to the

later filing of the application for the acquisition of Northeast.

On November 8, the Board waived the application of the so-called *Sherman Doctrine*, but declined to approve the transfer of funds to Northeast or to grant other affirmative relief.[4] In the same order the investigation was dismissed as to TWA.[5] Thereupon, Toolco terminated its guarantee to Shell and Shell advised Northeast that no sales or deliveries of fuel would be made after November 17, without cash payment on delivery. After November 17, Northeast paid cash for fuel letting other current accounts accumulate. The aggregate owed Shell for fuel and oil for the period October 20 through November 17, was $664,639; the bill was paid by Toolco.

On November 15, Northeast filed a petition for clarification, modification, and/or interpretation of Board Order E-17675, and the Board on November 17 set the matter down for oral argument on November 29.[6] Thereafter, the Board authorized Toolco to provide temporary financial assistance to Northeast.[7] Atlas and Toolco resumed negotiations and by the end of December had made three separate agreements involving additional financial assistance to Northeast and the transfer of Northeast from Atlas to Toolco.

[fol. 4818] The Financial Assistance Agreement dated December 29, 1961, provided, *inter alia*, that Toolco would provide a revolving credit of not more than $1 million to Northeast until March 15, 1962, and that in the event that the acquisition by Toolco of Atlas's interest in Northeast was approved by all governmental agencies having jurisdiction, Toolco would employ its best efforts to provide or secure such financial assistance to Northeast consistent with sound business practices, as may be necessary to assure the financial integrity of Northeast.

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[4] *Toolco-Northeast Control Case*, Order E-17675.

[5] Id. page 5 of mimeographed opinion.

[6] Order E-17742.

[7] Order E-17811, December 8, 1961.

The Waiver of Interest Agreement provided that Atlas would waive all interest on Atlas's notes for the period from January 1, 1961, through December 1, 1962, and that Toolco would waive all interest on Toolco's notes from April 1, 1961, to December 31, 1962. Under this agreement, Northeast would save $1,200,000 in fixed charges in 1961 and $1,500,000 in 1962.

The Purchase Agreement provides that Atlas will sell to Toolco its interest in Northeast, consisting of 996,226 shares of the common stock of Northeast, constituting approximately 56 percent of the total number of shares outstanding, and $16,251,744 principal amount of subordinated promissory notes of Northeast for $5 million.

The unaudited financial statement of Northeast as of December 31, 1961, shows total assets of $33,207,000 and current assets in the amount of $9,471,000. Total liabilities amounted to $55,846,000 of which $19,960,000 were current, $10,134,000 were deferred, and $25,752,000 consisted of subordinated notes owed to Atlas and Northeast. The company had a negative net worth of $22,640,000.

[fol. 4819] During the hearing in early April, Northeast submitted a revised estimate of its results for the first quarter of 1962. These estimates are as follows:

	Estimate
Available seat miles	381,615M
Load factor	53.3%
Revenue passenger miles	203,499M
Revenue	$ 14,038M
Operating expense	14,731M
Net operating profit	(693M)

As a result of the indicated losses, Northeast was unable to pay installments of principal on equipment-secured indebtedness due March 31. These principal payments amounted to $185,000 payable to lending banks under a 1955 Credit Agreement and $395,000 payable to General Electric under the jet engine lease agreement. On April 15, payment of $195,000 was due to Vickers and $300,000 to General Dynamics. In addition, the first of three monthly installments on indebtedness to the Chase Bank secured by Toolco's guarantee was due April 15 and a further in-

stallment of $185,000 was due under the Credit Agreement Plan. On May 15, payments identical to those due April 15 will be due. Based on the above estimates and reservations made before April 1, 1962, for travel during the month of April and later, Northeast expects its cash outflow to exceed its cash income by about May 15 and continued operations after that date will depend on obtaining supplies from trade creditors on a credit basis and a forbearance of all creditors or upon a receipt of funds from some other source.

[fol. 4820] Based on the data submitted by Northeast, the Bureau of Economic Regulation prepared a revised forecast for Northeast's operations for the year 1962.[8] These forecasts indicate that Northeast will incur an operating loss of $5,403,000 and a net loss of $6,229,000.

On a cash flow basis, the projected net loss of $6,229,000 offset by depreciation and amortization of $4,452,000, leaves a cash deficit of $1,777,000. Since firm obligations in 1962 are over $6 million, it would appear that Northeast would require additional assistance of at least $7,777,000 by the end of 1962. This is exclusive of the $1 million advanced to Northeast by Chase under the Financial Assistance Agreement or the $664,639 paid to Shell Oil by Toolco under the early guarantee agreement.

As of the time of the hearing, Northeast estimated that in the event of straight bankruptcy, its creditors would receive not more than four cents on the dollar. Based on the unfavorable results for the first quarter of 1962 and the failure of Northeast's liquidation estimate to include the costs of closing down, court costs, and contingent liabilities, it is probable that the interests of all general creditors would be substantially wiped out. The stockholders, of course, would receive nothing.

Northeast has about 2,900 employees who would lose their jobs and the New England area, the commuter markets between Boston, New York, Baltimore, Philadelphia, and Washington and the Northeast-Florida areas would be deprived of Northeast's services. Competitive services are [fol. 4821] available in most trunkline markets, but in New

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[8] The forecasts are set forth in Appendices 1 and 2.

England certain points would be deprived of all services until other arrangements could be made.

Toolco

Financial Ability. As hereinbefore stated, to meet Northeast's obligations for the balance of 1962 will require approximately $8 million and to salvage Northeast's services may require $20 million. The confidential portion of this decision indicates that Toolco would be able to raise $20 million to finance Northeast's operations if it decides that such an expenditure is justified.

Toolco's Proposal. Toolco has agreed that upon receiving approval of the Board and of any other governmental agency which has jurisdiction over the transfer of the Atlas interest in Northeast to Toolco, that it will employ its best efforts to provide or secure sufficient financial assistance to Northeast, consistent with sound business practices, as may be necessary to assure the financial integrity of Northeast.

Toolco was questioned at the hearing with reference to the extent in which it would invest additional funds in Northeast and any plans it had with reference to the rehabilitation of Northeast. In answer to such inquiries, Toolco did not commit itself to expend any specific amount of money, nor did it set forth any specific plan for regenerating Northeast. It stated that in view of the uncertainties involved in the Northeast operation, such as, the possibility of suspension of some points in New England, the fare structure which might be established by Northeast's [fol. 4822] competitors, the type of schedules its competitors would operate, the action of other creditors, and other unknown factors, that it would be impossible for it to make any specific proposal at this time with reference to Northeast's operations and its plans for Northeast.

Northeast's Jet Equipment Program

The implication has been raised that Toolco in assisting Northeast in its jet equipment program did not provide Northeast with the maximum assistance possible and may

have injured Northeast by the delay in arranging for the delivery of the jets and in supplying additional funds for Northeast.

The record will not support such a charge. Originally, Northeast negotiated directly with General Dynamics and General Electric to obtain jet equipment for the operation of its Florida route. It was not able to obtain conventional financing for its equipment program and could not persuade any manufacturer to finance the sale of such equipment to Northeast. General Dynamics and General Electric, however, did agree to lease six 880 jet transports to Northeast for a period of seven years. This arrangement was satisfactory to both Northeast and the manufacturers, but could not be consummated due to delays in General Dynamics production schedule for the 880's. Early in 1960, these delays made it clear that the 880's proposed for use by Northeast would not be delivered in time for the 1960-61 winter season, which Northeast believed was absolutely necessary for its survival.

Northeast attempted to find jets available for earlier delivery and discovered that Toolco had on order ten 880's [fol. 4823] from General Dynamics with delivery dates early enough for the 1960-61 winter season which were surplus to TWA's needs. (These ten aircraft were part of a group of thirty which Toolco had ordered for the use of TWA.)

Toolco indicated a willingness to release six of these aircraft to General Dynamics for rental to Northeast pursuant to that carrier's lease agreement with General Dynamics and General Electric. Although there was some delay in the release of this equipment, all of it was delivered to Northeast in time for the 1960-61 winter season and several months before similar equipment originally scheduled by General Dynamics for Northeast would have been available.

During the same period, Toolco agreed to lend $9,500,000 to Northeast to cover working capital requirements and developmental expenses involved in Northeast converting to a jet operation. Toolco at this period was engaging in refinancing TWA and any delays in the delivery of the Toolco planes to General Dynamics for lease to Northeast

and in the advancement of funds to Northeast pursuant to the loan agreement, appear to have been due to delays to the Toolco-TWA refinancing program.

A review of all of the facts and circumstances discloses that Toolco's release of the six aircraft to General Dynamics and advance of $9,500,000 to Northeast was necessary to enable that carrier to put its jet fleet in operation during the 1960 Florida winter season. It is clear that rather than a detriment, Toolco's action in this respect was of substantial benefit to Northeast.[9]

[fol. 4824] TOOLCO-TWA-NORTHEAST

All of the stock of Toolco is owned by Howard R. Hughes individually. For several years, prior to December 30, 1960, Toolco controlled TWA through the ownership of 78 percent of its stock. At that time the TWA stock was placed in a voting trust controlled by TWA's creditors. On or before September 28, 1956, Hughes acquired approximately 11 percent interest in the Atlas Corporation, which at that time, controlled Northeast. Thereafter, pursuant to Board order,[10] Hughes executed a voting trust agreement which embraced his entire stockholding in Atlas in which he consented not to vote the stock of Atlas.

Toolco evidently ordered ten jet aircraft from General Dynamics for TWA in excess of those finally determined by TWA to be necessary, but there is nothing to indicate that this was more than a mistake in judgment on Toolco's part or that Toolco attempted to make a profit on such transactions at the expense of TWA. Nor does the record disclose that in the operation of TWA, Toolco managed its operations in such a way that tax benefits which should have inured to TWA were obtained by Toolco.

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[9] In the event that arrangements could not be worked out so that General Dynamics would lease to Northeast the six Convair released by Toolco, Toolco agreed to rent such aircraft to Northeast on the same terms as those previously agreed upon between Northeast, General Dynamics, and General Electric.

[10] *Hughes-TWA-Atlas-Northeast Possible Common Control Case*, E-12925, 27 C.A.B. 155, (1958).

Toolco's Aeronautical Activities

Toolco owns four Convair 880's available for air transport purposes, it has contractual rights to five executive-type Lockheed Jet Star aircraft, has a subsidiary which manufactures two place helicopters, uses commercial [fol. 4825] aircraft in its business operations including a DC-6A, Convair 440, B-23, DC-3, and several Cessnas, and manufactures some electronic equipment, some of which may be used in aeronautical equipment.

None of this equipment or these operations at present have any relation with commercial air transportation, with the exception of the four Convair 880's. These planes are available for use in scheduled air service. Toolco, at present, is trying to dispose of them to TWA, but there is a possibility that if those negotiations fail, efforts will be made to sell or rent one or more of the planes to Northeast.

In May 1960, TWA submitted a study in which it was estimated that if Northeast and TWA merged, TWA would acquire revenues from Northeast's domestic routes in the amount of an additional $500,000, which was then going to competitors. This traffic would be bound for such TWA destinations as, Los Angeles, San Francisco, Chicago, St. Louis, Kansas City, etc. It was also estimated that Northeast's Florida route would contribute an additional $300,000 in revenues to TWA's international operations.

Conclusions

The record is replete with charges that relevant and material information have been withheld improperly and that consequently the record is incomplete and does not permit a valid decision herein on the merits.

Although there have been many requests for information and documentary material filed herein, not all of which has been produced, there is no indication that material and relevant evidence which would materially affect the issues herein have been withheld.

[fol. 4826] Toolco requested information from the Board's files with reference to the relationships between Toolco and TWA or Northeast to answer charges of the Bureau

concerning Toolco management. The Bureau, however, did not submit any evidence relating thereto which made necessary the production of any such underlying documents as suggested by Toolco.

The Bureau requested a substantial amount of documentary material from Toolco and Northeast. It appears that substantially all of such material which the Examiner found relevant, material, and not privileged was produced. The Bureau, however, argues that the delay in furnishing some of this material and the pressure of time prevented sufficient analysis for the development of a satisfactory record. A review of all of this material indicates that a longer and more intensive analysis would not have resulted in the development of additional or new facts sufficient to alter the conclusions reached herein.

The Bureau requested certain material which Toolco refused to produce on the ground that it was privileged because of the attorney-client relationship. The Examiner inspected all of such material and although none of the material which he directed to be withheld on the grounds of privilege was considered in arriving at the decision herein, he did not find any information in the privileged material which he believes, if fully analyzed and developed, would result in changing the conclusions herein set forth.

Several of the parties objected to the failure of Toolco to produce Howard Hughes as a witness. None of the information submitted herein with reference to Hughes' [fol. 4827] activities in his relationships with Toolco, TWA, and Northeast, indicates that any evidence which would be developed from the direct testimony of Hughes would alter the basic facts as they now appear in the record.

The Bureau makes the specious argument, that because the Examiner refused to receive evidence on the economy and efficiency of the Toolco management of TWA, that it was thereby prevented from introducing evidence with reference to the honesty or lawfulness of Toolco's management. The Bureau was informed that it could go thoroughly into such questions and that the investigation or examination with reference to those matters would not be limited or restricted because the development of such facts might

also be relevant to the question whether Toolco's management was economical and efficient. It was the deliberate decision of the Bureau not to investigate or present facts, if such were available, with reference to the honesty or unlawfulness of Toolco's operations. The rulings of the Examiner did not prevent a full investigation of this phase of the proceeding.

It is, of course, impossible to determine whether additional witnesses or existing documents would contribute further information with reference to the lawfulness, propriety, and honesty of Toolco in its relationships with TWA, Northeast or otherwise, but there is nothing in this record to indicate such witnesses or material are available.

One of the principal reasons for the numerous and indiscriminate charges of withholding of evidence and an incom- [fol. 4828] plete record is based on the attempts of the parties to try other proceedings herein. The only issue herein is whether the acquisition of control of Northeast by Toolco at the present time would be adverse to the public interest. The parties have attempted to try the *New York-Florida Renewal Case,* Docket 12285, the suit between Toolco and TWA now pending before a Federal Court in New York City, and even a possible merger between TWA and Northeast.

This record is adequate to make a fair decision on the merits as to whether control of Northeast by Toolco is in the public interest.

At the present time, Northeast is permanently certificated for routes in the New England area and is operating a route from New England to Florida pursuant to the authorization contained in section 9(b) of the Administrative Procedure Act.

It must be presumed that Northeast's continued operations are in the public interest. The question whether its route from New York south is needed, is at issue in the *Renewal Case*[11] and cannot be decided herein.[12]

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[11] *New York-Florida Renewal Case,* Docket 12285.

[12] *Toolco-Northeast Control Case,* Docket 11620, Order E-17811, p. 8, dated December 8, 1961.

Northeast is on the brink of financial collapse. Besides numerous trade obligations, which it is unable to meet, Northeast is at present not able to meet current payments due to secured creditors, and after May 15, it will have insufficient cash income to pay operating expenses. It is [fol. 4829] impossible to determine at this time the precise date when Northeast will be unable to continue its operations without funds from an outside source. This depends on many factors, such as, the day-to-day amount of revenues and expenditures, the continued forbearance of creditors, the willingness of suppliers to furnish supplies on credit, the willingness of employees to defer receipt of part of their salaries and wages, etc.[13]

It is clear however, that by reason of the drain of Northeast's internal resources during the coming few weeks, that it can continue operations without additional financial assistance for only a very brief period.

Atlas has stated and the record discloses that it is not in a position to provide additional assistance to Northeast. Northeast, in the past two years, has made many attempts to obtain financial assistance either by merger, the pledging of securities, or the sale of an equity interest, but no further financial assistance is available, except from Toolco. The only other possibilities of Northeast continuing to operate are; (1) the obtaining of temporary subsidy from the Board, or (2) reorganization under Chapter X of the Bankruptcy Act. Relief from either of these sources appears unlikely.

The Board, in its interim decision herein stated, "No one has seriously suggested that subsidy funds should be made available in such amount and manner as to satisfy Northeast's current needs." [14] The same is still true. Furthermore, [fol. 4830] Northeast does not have an application for subsidy on file at the present time and would be entitled to subsidy, if at all, only for future operations. At this late date, any subsidy that would be available, would be insufficient to prevent Northeast's financial collapse.

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[13] *Toolco-Northeast Control Case, supra,* pp. 5-6.

[14] Id. p. 6, footnote 6.

The possibility of Northeast obtaining subsidy seems to be even more remote than that of Capital at the time of the United-Capital merger. In considering the possibility of subsidy for Capital, the Board stated,

> "Capital's request on two occasions for temporary subsidy were both denied.[15] In rejecting one of these petitions the Board observed that (1) none of the 12 United States domestic trunkline air carriers is receiving subsidy; (2) with minor exceptions all of the domestic trunklines have been operating without subsidy for over eight years, and (3) no other domestic air carrier has pending before the Board a claim for subsidy for any current period."[16]

Even if subsidy were available to Northeast, it would be in an amount insufficient to rehabilitate Northeast as a viable company. Northeast needs approximately $8 million to meet its obligations this year and estimates as to the total needed to salvage its operations, run as high as $20 million. In view of what the Board stated in the *United-Capital Merger Case*[17] and in the interim opinion herein,[18] the Board [fol. 4831] would not, in the absence of legal compulsion, favor underwriting Northeast's operations with the enormous amount of subsidy that would probably be required to insure its survival, and certainly would not award temporary mail pay in advance of hearing. Consequently, even though subsidy could be made available after notice and hearing, it would arrive too late to save Northeast from extinction.

It is likewise true that reorganization under Chapter X of the Bankruptcy Act would offer no salvation for Northeast. On the facts in this case, it does not appear that a

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[15] Footnote omitted.

[16] *United-Capital Merger Case*, Order E-16605, pp. 9-10, mimeographed opinion (1961).

[17] Id. *supra*, p. 10.

[18] Order E-17811, p. 6, footnote 6.

petition for reorganization could be filed in good faith.[19] As in the *United-Capital Case, supra*, the only successful reorganization plan would depend upon subsidy being available to Northeast in such an amount to keep Northeast operating. Such an amount does not appear to be available and, absent of subsidy, a Chapter X reorganization holds no reasonable promise of recovery for Northeast. In addition, Northeast's agreement with its creditors provides that Northeast's entire turbine-powered fleet would be subject to repossession in a reorganization pursuant to Chapter X of the Bankruptcy Act. But for financial assistance from Toolco, Northeast faces bankruptcy and liquidation.

The effects of the closing of Northeast are readily apparent. First, 2,900 employees would be deprived of their livelihood; second, all of Northeast's air services would cease [fol. 4832] immediately, including services to points not served by any other carrier and four points which do not receive passenger rail service; third, all unsecured creditors for debts totalling $8,764,000 as of December 31, 1961, would be practically wiped out; and fourth, the interests of all shareholders would be eliminated immediately.

The only apparent alternative to these disastrous results, is to approve the acquisition of Northeast by Toolco. It is not certain that even this will prevent the collapse of Northeast. The Financial Assistance Agreement which Toolco executed provides that Toolco will employ its best efforts to provide or secure such financial assistance to Northeast, consistent with sound business practices, as may be necessary to assure the financial integrity of Northeast. Whether the advancement of any more money would be, in Toolco's opinion, consistent with sound business practices, is a decision that Toolco will have to make if the transfer is approved.

Toolco, however, at all times, has indicated its interest in preserving Northeast as an operating organization. It has already invested funds of approximately $11 million in the Northeast operations and if this acquisition is approved, it will invest an additional $5 million. Although there are

[19] The statute provides, *inter alia*, that a petition shall be deemed not to be filed in good faith if it is unreasonable to expect that a plan of reorganization can be effected. 11 U.S.C. 546.

some implications that Toolco might use Northeast's losses, in case it discontinues its operations, as a set-off for income tax purposes against profits on its other operations, there has been no showing herein to what extent such a set-off is available or that it would justify the additional expenditure of $5 million. In any event, the possibility that Toolco may [fol. 4833] discontinue Northeast immediately as an operating organization must be discounted. Toolco has indicated that if control of Northeast is approved it hopes to have the Florida route renewed, to regain control of TWA, and to merge Northeast and TWA. Toolco's previous relations with Northeast indicate an intent, a willingness, and ability to keep Northeast operating. Toolco, by the release of jet equipment to Northeast and by advancing more than $10 million in the last two years has kept Northeast in operation and in competition with other carriers.

All the evidence of record indicates that Toolco intends to keep Northeast viable as an operating entity in the immediate future and that it hopes to rehabilitate Northeast so that it will continue operations into the indefinite future. But, in any event, failure of Toolco to salvage Northeast will have no more adverse effect on the public, its employees, its creditors, or its shareholders than immediate liquidation, which is the only alternative.

There is no substantial evidence in this record, and none that would support a finding, that Toolco, in its dealing with either Northeast or in its prior control of TWA, engaged in improper self dealing with either of these two companies or that it engaged in unlawful activities.

Toolco has been charged with obtaining control of Northeast contrary to section 408 of the Act and the Board's cease and desist order.[20] These charges primarily grew out of certain transactions that occurred between Toolco, Atlas, and Northeast in May of 1960.

[fol. 4834] During early 1960, Northeast was in financial difficulties, needed jet equipment, and was looking for solutions to these problems including possible mergers. Upon learning that Toolco had jet aircraft available, Northeast

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[20] *Hughes-TWA-Atlas-Northeast Possible Control Case*, E-12925, 27 C.A.B. 155 (1958).

entered into negotiations with Toolco for equipment and financial assistance. As a result, agreements were reached by which; (1) Toolco released six 880 aircraft on order to General Dynamics for lease to Northeast, (2) Toolco agreed to lend Northeast $9,500,000, and (3) Toolco and Atlas agreed that they would vote their respective interests in TWA and Northeast for a merger of the two airlines, if the Board of Directors of the two carriers approved the merger. The Northeast Board approved the merger immediately, but TWA did not, despite the fact Toolco continued to control TWA until the end of that year.

Although these three transactions occurred at approximately the same time, it did not effect an acquisition of control by Toolco. The release of jets permitted a lease of the equipment between the manufacturer and Northeast on terms previously agreed to between Northeast, General Dynamics, and General Electric. The loan was not even subject to the usual conditions customarily found in loans to air carriers, such as, restrictions on working capital, dividend policy, equipment acquisitions, and the like.

The merger agreement was not completed and during the period that the merger agreement was before TWA for consideration, Northeast engaged in merger talks with several other airlines including Delta, Braniff, American, and Continental, without the consent of Toolco. The failure [fol. 4835] of any of these negotiations to develop into a merger was not due to any unwillingness of Northeast or any obstacle imposed by Toolco, but rather to the disinterest of the other carriers. The record does not disclose that Toolco attempted to manage or control Northeast's operations, nor that it participated in any of the major decisions made by Northeast between January 1959 and December 31, 1961.

Any control which Toolco may have acquired over Northeast would appear to be due not to its position as a subordinated creditor, but to its financial resources and an inclination to help Northeast. Northeast has been in such desperate financial circumstances for the last two years, that it, of necessity, would have been compelled to give serious consideration to the suggestions of any person or organization which offered the possibility of financial assistance.

Such a control would not be within the meaning of section 408 of the Act.

Assuming, however, that Toolco did acquire the power to control Northeast at some period during the last two years, through its creditor relationship[21] or its inclination to finance Northeast, that control should be approved. Toolco has never exercised or attempted to exercise control of Northeast. To disapprove Toolco's control of Northeast because Northeast's financial condition was so precarious that legally it was controlled by its hopes for assistance from a subordinated creditor, would be an over-technical application of the law and would serve no useful purpose. [fol. 4836] The approval of the acquisition of Northeast by Toolco will increase competition rather than restrain it. If the acquisition is not approved, Northeast will fail and competition will be eliminated from all of its trunkline routes. On the other hand, the continuance of Northeast's operations will maintain competition on Northeast's trunkline routes in New England and on the Florida route until the *Renewal Case, supra,* is decided.

The only other aeronautical activities in which Toolco is engaged at the present, which have any relationship with commercial air transportation is the ownership of four Convair 880 jets. These aircraft are satisfactory for scheduled air service and it may be that Northeast could use one or more to advantage, but in any event, if the merger is approved, it should be subject to appropriate conditions under which the transfer of the 880's to Northeast or any other substantial transactions between Toolco and Northeast will require approval by the Board.

Toolco, although not controlling TWA, still owns 78 percent of the stock of that company. Toolco might for the benefit of its interest in TWA divert some connecting traffic from Northeast to TWA rather than to TWA's competitors. TWA estimated in 1960 that $500,000 in domestic revenues might be diverted to it by Northeast (primarily traffic to points on its transcontinental route), but none of TWA's transcontinental competitors have appeared herein or objected and none of the intervening carriers

[21] *Transocean-Atlas,* Order E-14370, decided August 21, 1959.

have made any charges or submitted estimates with reference to such diversion. Toolco has given no indication that it would attempt to divert Northeast connecting traffic to TWA.

[fol. 4837] TWA estimated that an additional $300,000 in international revenues would be obtained from Northeast's Florida passengers, but none of TWA's international competitors have appeared herein or objected.

The Bureau recommends:

1. That the Board tentatively approve control of Northeast by Toolco pending decision in the *New York-Florida Renewal Case, supra;*

2. That the Board direct the Examiner in the *Renewal Case* (a) to obtain from Toolco firm and detailed plans and commitments for the financial rehabilitation and managerial independence of Northeast contingent upon the renewal of the route case; (b) to investigate the fitness of Northeast; and (c) not to investigate the fitness of Toolco, or its efficiency and economy;

3. That, in the event Northeast is denied renewal of the Florida route, approval of its control by Toolco should become final;

4. That, in the event the Board decides to renew Northeast's Florida route, such renewal should be contingent upon Toolco placing its interest in Northeast "in a voting trust pending a full investigation of Toolco's managerial efficiency, economy, and other matters which were not fully developed in the control case." (Sic)

5. That the record herein be kept open and, in the event Northeast's Florida route is renewed, the Examiner herein should investigate the efficiency and economy of Toolco's management.

[fol. 4838] 6. That, in the event in this latter phase of the proceeding permanent control of Northeast is approved, the voting trust should be terminated and normal rights restored to Toolco; and

7. That, in the event further, if Toolco's control is disapproved, the voting trust should continue until Toolco,

within a reasonably short time after decision, disposes of its Northeast stock.

Such a procedure would be improper, inequitable, impractical, and probably illegal.

It would be improper because it would be expanding the issues herein and deciding in this case on this record procedures to be followed in other proceedings with other issues and other parties. If the Board wishes to establish procedures for the trial of the *Renewal Case*, it should be done in that proceeding where the parties thereto can take such action as they see fit. The Bureau is a party to that proceeding and it can make such a motion at the proper time and place, and in the proper manner.[22]

It would be inequitable because it would force Toolco after risking a substantial investment in resuscitating and rehabilitating Northeast to face the hazard that if its salvage operation is successful, it may be deprived of the fruits of its labor. On this record, any possibility of Toolco [fol. 4839] recovering its contemplated investment in Northeast is so remote that it would be unfair to impose the additional hazards that if the Florida route was renewed, Toolco might not obtain the benefit thereof.

It would be impractical because for reasons stated in the paragraph above, the possibility of Northeast becoming a profitable operation is so remote that Toolco could not afford to accept the additional condition that it might be deprived of Northeast with a renewed Florida route.

It would also be inequitable and probably illegal to conduct a route proceeding under section 401 of the Act in which the parties were prevented from investigating the qualifications of a person controlling an applicant to determine the applicant's fitness, willingness, and ability. Toolco would be prevented from showing its qualifications, and Eastern, National, and other parties would be prevented from showing the lack of qualifications.

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[22] The Bureau should not be permitted to circumvent Rule 18, which requires all motions to be made to the Examiner and which prohibits appeals without permission of the Examiner, by making motions or filing requests in another independent proceeding.

One of the bases for the Bureau's recommendation that the record remain open until after decision in the *Renewal Case*, is the failure of Toolco to submit definitive proposals herein, as to the amount of money which it intended to invest in Northeast and the type of services it would provide.

If Northeast were a financially sound going concern, a person seeking control of it might be able to submit a specific plan for financing and operating the carrier. But, under the present circumstances, such a plan may not be feasible. In addition to Toolco, numerous other parties have [fol. 4840] substantial interests in the maintenance of Northeast as a viable carrier. It can be expected that if Toolco's control is approved, it will attempt to obtain the cooperation and assistance of other interested persons in the rehabilitation of Northeast. Any plan which Toolco submitted now, would be speculative in the extreme and might prejudice its negotiations with other interested parties.

Although it should go without saying that the decision herein is limited to the issues in this proceeding and is based on the evidence of record only, the frequent arguments, comments, and references, both direct and indirect, concerning other proceedings, which were made at the hearing and in various documents including briefs, makes it expedient to add a further word of caution.

Toolco has negotiated for the acquisition of Northeast with its eyes open and is aware of Northeast's financial condition and the status of the *Renewal Case*. The decision herein is based only on Northeast's status as a New England carrier with a Florida operation pursuant to section 9(b) of the Administrative Procedure Act. Likewise, it is not concluded herein that Toolco's relationships with TWA and Northeast have been honest, proper, and lawful. The only conclusion on this matter reached herein, is that there is nothing of record that would support a holding that Toolco, in its relationships with TWA, has acted in an improper, dishonest, or unlawful manner.

Based upon the foregoing discussion and all the facts of record, it is concluded that the acquisition of control of [fol. 4841] Northeast by Toolco would not be adverse to

the public interest, nor would it create a monopoly and thereby restrain competition or jeopardize another carrier not a party to such acquisition. It is further concluded that the financial support of Northeast which Toolco can provide will inure to the public interest in that the maintenance of Northeast's operations are beneficial to the travelling public, Northeast's employees, its creditors, and its stockholders.

The acquisition of Atlas' interest in Northeast by Toolco is approved subject to the following conditions:

1. That said approval shall be effective so long as commercial transactions between Northeast and Toolco and between Northeast and any affiliate or subsidiary of Toolco are limited to transactions involving complete items of property, the price of which does not exceed $200 each, with the further limitation that the total annual expenditure involved in such commercial transactions by either party shall not exceed $10,000;

2. That Northeast shall furnish with its annual report to the Board a supplement thereto showing the total of all cash transactions between Northeast and Toolco and/or any affiliate or subsidiary thereof, the number of such transactions, the maximum and minimum price of items of property, and the general nature of the commodities involved; and

3. That the terms of this order shall not restrict or affect the right of purchase by Toolco through Northeast of,

(a) transportation from Northeast at regularly published rates;

[fol. 4842] (b) aviation fuel from Northeast at prices charged by Northeast to other purchasers; and

(c) repairs, modifications, maintenance and overhaul services, including parts and materials necessary therewith, from Northeast at prices charged by Northeast to other purchasers.

/s/ MERRITT RUHLEN

Attachment

May 7, 1962

APPENDIX 1

[fol. 4843]

ESTIMATED OPERATING RESULTS [illegible] AIRLINES 1962
BASED UPON [illegible]'S OWN FOR[illegible] [illegible] NEW YORK FLO[illegible] -
DOCKET 1228[illegible] - AND DATA SUBMITTED IN DOCKET 1162[illegible]

Operating Statistics (000)	Long-Haul Route Quarter Ended 3/31/62 Forecast 1/ Dct. 12285	Long-Haul Route Quarter Ended 3/31/62 2/ Adjusted	Short-Haul Route Quarter Ended 3/31/62 Forecast 1/ Dct. 12285	Short-Haul Route Quarter Ended 3/31/62 2/ Adjusted
Revenue Miles	2,869	-	2,484	
Revenue Passenger Miles	182,966	153,708	63,767	49,791
Available Seat Miles	265,199	264,869	123,449	115,746
Rev. Passenger Load Factor	69.0%	58.0%	51.6%	42.7%
Operating Revenue (000)				
Passenger Revenue	$ 11,207	$ 9,415 5/	$ 4,945	$ 3,861 9/
Other	1,130	562	244	200 6/
Total Operating Revenue	$ 12,337	$ 9,977	$ 5,189	$ 4,061
Operating Expenses (000)				
Direct Operating Expense	-	- 12/	-	- 12/
Burden				
Passenger Expense				
Departure Expense				
Total Operating Expense	8,812	8,680	6,225 2/	6,051
Operating Gain (Loss)	$ 3,525	$ 1,297	$ (1,036)	$ (1,990)

(Footnotes on page 3)

[fol. 4844] APPENDIX

ESTIMATED OPERATING RESULTS FOR NORTHEAST AIRLINES FOR 1962
BASED UPON NORTHEAST'S OWN FORECAST IN THE NEW YORK-FLORIDA CASE - DOCKET 12285 - AND DATA SUBMITTED IN DOCKET 11620

	Long-Haul Route Year 1962		Short-Haul Route Year 1962		NEA System Forecast For 1962	
Operating Statistics (000)	Forecast Dct. 12285 1/	Adjusted	Forecast Dct. 12285 1/	Adjusted	Northeast 1/ Forecast	Adjusted
Revenue Miles	10,743	10,743	10,857	10,857	21,600	21,600
Revenue Passenger Miles	612,839	515,709 3/	289,332	252,800 4/	902,171	768,599
Available Seat Miles	994,089	994,089	545,756	539,053	1,539,845	1,533,142
Revenue Passenger Load Factor	61.6%	51.9%	53.0%	46.9%	58.6%	50.1%
Operating Revenue (000)						
Passenger Revenue	$ 37,292	$ 31,386 7/	$ 22,686	$ 19,370 10/	$ 59,978	$ 50,756
Other	3,760	1,883 8/	1,141	1,007 11/	4,901	2,890
Total Operating Revenue	$ 41,052	$ 33,269	$ 23,827	$ 20,688	$64,879	$ 53,646
Operating Expenses (000)						
Direct Operating Expense	16,513	18,617 13/	12,689	12,689	29,202	31,306
Burden					4,680	4,680
Passenger Expense					16,046	15,243 14/
Departure Expense					7,820	7,820
Total Operating Expense	- 15/	-	- 15/	-	57,748	59,049
Operating Gain (Loss)	-	-	-	-	$ 7,131	$ (5,403)

(Footnotes on page 3)

[fol. 4845] APPENDIX 1

ESTIMATED OPERATING RESULTS FOR NORTHEAST AIRLINES FOR 1962
BASED UPON NORTHEAST'S OWN FORECAST IN THE NEW YORK FLORIDA CASE -
DOCKET 12285 - AND DATA SUBMITTED IN DOCKET 11620

FOOTNOTES

1/ From NEA Exhibit 711.2, Docket 12285.
2/ From written testimony of Mr. Rembrandt P. Lane, Jr., Docket 11620. Exhibit NEA-5.
3/ Computed on basis of adjusted first quarter result per Mr. Lane's testimony, assuming the first quarter to be 29.8% of the annual total. This ratio based on Northeast's forecast in NEA 711.2, Docket 12285.
4/ Computed on basis of adjusted first quarter result per Mr. Lane's testimony plus 90% of the passenger miles forecast by Northeast in these markets for the remaining three quarters of the year assuming that Northeast's "No Reservation" tariff made effective Feb. 27, 1962, will substantially restore Northeast's competitive position in the New York-Boston and New York-Washington markets. For this purpose it has been assumed that Northeast's service level will remain as forecast by the carrier.
5/ Computed at forecast passenger yield for the first quarter of 6.125 cents per NEA 711.2, Docket 12285.
6/ Difference between total operating revenue reported and computed passenger revenue.
7/ Computed at forecast passenger yield for the year at 6.085 cents per NEA 711.2, Docket 12285.
8/ Computed at ratio to passenger revenue for adjusted first quarter of 6.0%.
9/ Computed at forecast passenger yield for the first quarter of 7.755 cents per NEA 711.2, Docket 12285.
10/ Revenue passenger miles times forecast yield of 7.841 cents adjusted downward by $452 (000) for no reservation tariff, assuming that 85% of Northeast's forecast - Boston-New York and New York-Washington traffic would be carried and that 30% of this traffic would use the lower fare.
11/ Computed at ratio to passenger revenue for adjusted first quarter of 5.2%.
12/ Operating expenses not reported in detail.
13/ Aircraft rental expense adjustment of $2,104 (000) made to reinstate this as an operating expense per NEA 711.1, Docket 12285.
14/ Computed at 95% of expense forecast in NEA 711.2 to adjust for a reduction in revenue passenger miles from that forecast by Northeast of 15%.
15/ Indirect operating expenses not reported by equipment type in Northeast's forecast NEA 711.2, Docket 12285.

[fol. 4846]

APPENDIX 2

Page 1 of 1

NORTHEAST AIRLINES, INC.
SELECTED TRAFFIC AND FINANCIAL DATA
1955-1961 AND FORECAST FOR 1962

(AMOUNTS IN THOUSANDS)

Calendar Year	Rev. Passenger Miles	Available Seat Miles	Passenger Load Factor	Operating Revenue	Operating Expenses	Operating Gain (Loss)	Net Income (Deficit)	Retained Earnings	Stock-holders' Equity
1955	116,450	196,635	59.2%	$ 10,120	$ 9,972	$ 148	$ 380	$ 1,131	$ 5,183
1956	119,254	203,843	58.5	10,300	10,729	(429)	(300)	831	11,984
1957	245,182	517,728	47.4	15,894	20,112	(4,218)	(4,324)	(3,493)	7,592
1958	407,116	860,690	47.3	26,739	30,486	(3,670)	(3,670)	(7,163)	3,922
1959	519,049	1,031,470	50.3	31,450	37,158	(5,708)	(7,062)	(14,225)	(3,140)
1960	564,943	1,096,674	51.5	37,931	43,960	(6,029)	(10,814)	(25,039)	(13,954)
1961 1/	750,955	1,495,026	50.2	51,129	59,374	(8,245)	(9,442)	(34,482)	(23,396)
1962 2/	769,599	1,533,142	50.1	53,646	59,049	(5,403)	(6,229) 3/	(41,711)	(29,625)

1/ Financial data based on preliminary year-end report.

2/ Revised forecast based on Northeast's filings in this proceeding and Docket 12285. See Appendix 1.

3/ Operating loss plus $826 (000) interest expense per NEA-606.

[fol. 4847]

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Issued under delegated authority

Docket 11620 et al.

In the matter of the

TOOLCO-NORTHEAST CONTROL CASE

ORDER

A full public hearing having been held in the above-entitled proceeding and the Examiner, upon consideration of the record, having issued an initial decision containing his findings and conclusions, pursuant to authority delegated to Hearing Examiners under Rule 27 of the Rules of Practice in Economic Proceedings, which initial decision is attached hereto and made a part hereof;

IT IS ORDERED:

1. That the acquisition of control of Northeast Airlines, Inc., by Hughes Tool Company, be and it hereby is approved;

2. That the approval granted herein is subject to the following terms and conditions:

1. That said approval shall be effective so long as commercial transactions between Northeast and Toolco and between Northeast and any affiliate or subsidiary of Toolco are limited to transactions involving complete items of property, the price of which does not exceed $200 each, with the further limitation that the total annual expenditure involved in such commercial transactions by either party shall not exceed $10,000;

2. That Northeast shall furnish with its annual report to the Board a supplement thereto showing the total of all

cash transactions between Northeast and Toolco and/or any affiliate or subsidiary thereof, the number of such transactions, the maximum and minimum price of items of property, and the general nature of the commodities involved; and

[fol. 4848] 3. That the terms of this order shall not restrict or affect the right of purchase by Toolco through Northeast of,

(a) transportation from Northeast at regularly published rates;

(b) aviation fuel from Northeast at prices charged by Northeast to other purchasers; and

(c) repairs, modifications, maintenance and overhaul services, including parts and materials necessary therewith, from Northeast at prices charged by Northeast to other purchasers.

3. That this order shall become effective as the final order of the Board on the thirty-first (31st) day after the date of service of this order and the initial decision attached hereto unless a petition for discretionary review is filed within fourteen (14) days after service hereof in accordance with Rule 28 of the Rules of Practice in Economic Proceedings (14 CFR 302.28) as modified by agreement of the parties during the hearing herein, or the Board issues an order to review upon its own initiative. If a petition for discretionary review is timely filed or if action to review is taken by the Board upon its own initiative, the effectiveness of this order shall be stayed until further order of the Board.

/s/ MERRITT RUHLEN
Merritt Ruhlen
Hearing Examiner

[fol. 4849]

E-18470

[Stamp—Received—Jun 19 1962—8 30 P M—Chester C. Davis]

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

DOCKET 11620 *et al.*

TOOLCO-NORTHEAST CONTROL CASE

Decided: June 19, 1962

The acquisition of control of Northeast Air Lines by Hughes Tool Company held not to be inconsistent with the public interest or to result in creating a monopoly or monopolies and thereby restrain competition or to jeopardize any other air carrier not a party to the acquisition of control; control relationship approved subject to conditions.

APPEARANCES:

Same as in Initial Decision.

[fol. 4850]

Order No. E-18470

[Stamp—Received—Jun 19 1962—8 30 P M—Chester C. Davis]

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D.C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D.C.,
on the 19th day of June, 1962

Docket 11620 *et al.*

In the matter of the

TOOLCO-NORTHEAST CONTROL CASE

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That the acquisition of a controlling interest in Northeast Airlines, Inc. (Northeast), by Hughes Tool Company (Toolco), pursuant to a Purchase Agreement dated December 28, 1961 between Toolco and Atlas Corporation (Atlas), be and it hereby is approved under section 408 of the Act.

2. That the approval granted herein is subject to the following terms and conditions:

(a) Said approval shall be effective so long as commercial transactions between Northeast and Toolco and between Northeast and any affiliate or subsidiary

of Toolco do not exceed $100,000 per year in the aggregate without prior Board approval;

(b) Northeast shall furnish with its annual report to the Board a supplement thereto showing the total of all cash transactions between Northeast and Toolco and/or any affiliate or subsidiary thereof, the number of such transactions, the maximum and minimum price of items of property, the basis for such costs or charges, and the general nature of the commodities involved;

(c) The terms of this order shall not restrict or affect the right of purchase by Toolco through Northeast of transportation from Northeast at regularly published rates;

(d) Approval of the control relationship involved shall not be deemed a determination of the fairness or [fol. 4851] reasonableness of any of the financial arrangements thereunder for future rate-making or other regulatory purposes under the Act with respect to Northeast, Toolco or any of its affiliates or subsidiaries;

(e) The Board retains jurisdiction over this proceeding under section 408 of the Act for the purpose of imposing from time to time such other terms and conditions as it may find fair and reasonable, and for the further purpose of requesting submission of such special reports as the Board may from time to time order; and

(f) The Board further retains jurisdiction for the purpose of re-examining any of the controls herein approved, if it finds such action to be in the public interest.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

[fol. 4852]
[Stamp—Received—Jun 19 1962—8 30 P M—Chester C. Davis]

OPINION OF THE BOARD

By BOYD, Chairman:

The ultimate issue here before us is whether or not we should approve the acquisition by Hughes Tool Company (Toolco) of Atlas Corporation's (Atlas) controlling interest in Northeast Airlines, Inc. (Northeast) as consistent with the public interest under section 408 of the Act. At its inception, this proceeding was instituted to determine whether Toolco, Howard Hughes, Trans World Airlines, Inc. (TWA), or any or all of these had already acquired control of Northeast by certain transactions without prior Board approval, in violation of that section.[1] Subsequent to a further Board order on December 8, 1961, directing that the investigation be set down for hearing on an expedited basis, and authorizing Toolco to render emergency financial assistance to Northeast in the interim, Toolco, Northeast and Atlas filed a joint application to the Board[2] for approval of the acquisition by Toolco of Atlas' 56 percent controlling interest in Northeast pursuant to a Purchase Agreement, dated December 28, 1961, between those parties. This application for approval of the proposed purchase was consolidated in the precedent investigation, Docket 11620.[3]

Eastern Air Lines, Inc. (Eastern), National Airlines, Inc. (National), Allegheny Airlines, Inc. (Allegheny), and Mohawk Airlines, Inc. (Mohawk), were made parties to the [fol. 4853] proceeding. After hearings were held on an expedited basis and briefs filed, the Examiner issued an Initial Decision in which he concluded that the acquisition of control of Northeast by Toolco would not be adverse to the public interest, nor create a monopoly, restrain competition, nor jeopardize other carriers not a party to such acquisition.

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[1] Order E-15532, dated July 12, 1960. The investigation was dismissed as to TWA in Order E-17675, dated November 8, 1961.

[2] Docket 13328, January 8, 1962.

[3] Order E-18061, dated March 1, 1962.

He further concluded that the financial support of Toolco which Northeast can provide will inure to the public interest, and that acquisition of Atlas' position in Northeast should be approved, subject to certain conditions respecting commercial transactions between Northeast and Toolco, its affiliates or subsidiaries.

The Board having determined to exercise its right of discretionary review of the Initial Decision, exceptions thereto and briefs were filed by Eastern, National, and the Bureau of Economic Regulation. A supporting brief was filed by Toolco; Northeast and Atlas relied upon their brief to the Examiner. The Board has heard oral argument and the case stands submitted for decision.

Upon consideration of the record in light of the contentions of the parties, we find that we agree with the Examiner that the control arising out of the proposed purchase should be approved. Attached hereto as an Appendix is the Initial Decision of the Examiner, whose findings, conclusions, and decision we adopt as our own, except as modified herein.

As the basis for his conclusions, the Examiner relied on a number of findings. Without attempting to set them forth in detail, in essence, they reduce themselves to this. Northeast is on the verge of bankruptcy and unless it obtains [fol. 4854] outside help, it will soon be forced to cease operations. If the carrier is to be maintained in being and its services continued, there are no feasible alternatives to approval of the control applied for. Other sources of financial assistance have been explored by Northeast's management over the past two years to no avail. Even if subsidy mail pay were available, it would not suffice to maintain Northeast as a viable company, and a reorganization under Chapter X of the Bankruptcy Act holds no promise of recovery. Toolco offers the only hope for survival of the company. It must be presumed that Northeast's continued operations are in the public interest. Allowing Northeast to die would not only deprive the traveling public, including numerous communities that have no other air service and some that even have no rail passenger service, of the carrier's service, but would have the further effect of depriving

2,900 company employees of their livelihood, of virtually wiping out unsecured creditors of the company holding debts which total over $8,000,000, and of completely eliminating the interests of the company's shareholders.

The Examiner also concluded that Toolco is financially able to render financial assistance to Northeast in an amount of at least $20,000,000; that although Toolco has not proposed or promised any specific sum of money or presented specific plans for rehabilitation of Northeast, the evidence of record indicates that Toolco intends to keep Northeast operating in the immediate future and hopes to rehabilitate it. He further considered the detailed arguments of the objecting parties against approval of the acquisition and [fol. 4855] rejected them, but in so doing further found in each instance that even if the allegations had been established the over-all public interest, on balance, would still dictate approval.

Throughout the arguments of the opponents of the acquisition runs the thread that we should allow the carrier to expire. In some instances, this is expressly stated. In others, it is implied, but is no less there. For even the arguments that we should explore alternatives to approval of this acquisition have inherent in them the same element of delay in coming to grips with the basic problem and would bring about the same result. We have previously been faced with the problem of an established carrier *in extremis* and with the argument that we should explore various alternatives before granting approval. We rejected those arguments there,[4] and on the facts before us here, we similarly conclude that the public interest in maintaining Northeast, and in avoiding the serious consequences that would flow from its collapse, override all other considerations and arguments that have been urged upon us.

The Examiner considered the specific arguments of the carriers opposing approval of the acquisition, and we are in substantial agreement with his conclusions. We, therefore, will discuss these specific contentions only briefly.

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[4] *United-Capital Merger Case*, Order E-16605, dated April 3, 1961.

1. Eastern and National charge that Toolco has already acquired control of Northeast without the requisite Board approval, that such acquisition constitutes a wilful violation of the Act, and that we must, therefore, deny the application. The Examiner found that Toolco has not acquired [fol. 4856] control within the meaning of the Act. We agree with him that the record fails to establish that Toolco has actually exercised or attempted to exercise control over Northeast. Whether Toolco, by virtue of Northeast's need for funds and Toolco's position as a source of financial assistance, may have, at some time, acquired the power to exercise control is a different question.

But even if questions of control, and power to control, were resolved against Toolco, on this record we would nonetheless agree with the Examiner that they should not lead us to disapprove the application. As we stated in the *Transocean-Atlas* case (Order E-14370, August 21, 1959)

> "In this case our alternatives are to find that the prior violation of the Act precludes the grant of Board approval of the applications, with the likelihood of thereby throwing Transocean into bankruptcy, or to grant approval in order to afford Transocean the opportunity to continue operations. As indicated in our earlier discussion we believe the greater public interest lies in approving the control and interlocking relationships produced by the agreement."

Similar considerations in the instant case lead us to the same conclusion.

2. The Examiner found that it must be presumed that Northeast's continued operations are in the public interest. Both National and Eastern contend that this "presumption" of need for Northeast's services was erroneous and that we should remand the case to the Examiner for full and complete hearing on the issue of need for Northeast's services. Absent such remand, it is contended, the Board may not rely on Northeast's existing route structure as a means [fol. 4857] of justifying any form of approval in this proceeding. We reject that contention.

Northeast has been providing services in air transportation since before passage of the Act in 1938. It presently holds permanent authority to operate over routes in the New England area, and provides the only available air service to numerous communities there. Additionally, it holds authority to operate between New York and Miami. It is true that this latter authority, which was temporary, has expired by its terms and is now in effect by operation of law under the provisions of section 9(b) of the Administrative Procedure Act. However, the fact remains that the carrier does hold lawful authority to conduct those services and is providing them.

We think we may properly take into account as a legitimate and significant public interest consideration the desirability of maintaining Northeast in a viable condition until route issues can be determined in proceedings in which all alternatives to Northeast's operation of its routes can be fully explored.

The matters which Eastern and National would have us try are route issues going to the public convenience and necessity for Northeast's authorizations. We find no requirement that they be considered here and further conclude that to do so would not be in the public interest. The question of whether Northeast's temporary New York-Florida authorization should be renewed is in issue in the pending *New York-Florida Renewal Case,* Docket 12285, and the carriers will have a full opportunity there to support their contentions that Northeast's services south of New York are not required by the public convenience and necessity. [fol. 4858] In finding that it is in the public interest to keep Northeast alive, we do not consider, or pass upon, the issues in the pending route proceeding. Those are matters to be determined at a future date upon the record, and in the light of the arguments of the parties there. Our unrestricted approval of this acquisition will not prevent the Board from determining that the route should not be renewed if the record in the route case dictates such a conclusion. Toolco is acquiring Northeast subject to whatever problems the carrier may have and whatever disabilities it be under in terms of the future. The risk of Board action in the route field is a risk which Toolco must assume.

3. In any event, we must consider the consequences that would flow from a disapproval of the acquisition and from Northeast's ensuing demise. The Examiner pointed out the far-reaching effects that disapproval would have and found that the desirability of avoiding them was an important public interest consideration favoring approval. We agree with the Examiner. Eastern and National assert that the air travelers in the New England monopoly markets could be divided up among them and the local service carriers serving New England, Mohawk and Allegheny. Such a remedy would cost the Government an unforeseeable amount in subsidy. Moreover, the only formal proposal looking toward such a solution is National's exemption application, contingent upon involuntary cessation of operations of Northeast, for temporary authority to serve six of its New England points. Obviously, we have no assurance that this alternative, or any other that might be considered, would ultimately turn out to be practicable, so that we [fol. 4859] would at best be gambling with the public interest as the stake, and taking an irrevocable step in permitting Northeast to expire on the mere chance that a satisfactory alternative could be found. Further, it is hardly conceivable that a pattern of substitute services could be accomplished in time to avoid a serious disruption of service in Northeast's monopoly markets.

Nor would the impact of Northeast's cessation of service be limited to the traveling public. As the Examiner noted, almost 3,000 Northeast employees would be thrown out of work. The unsecured creditors and stockholders of Northeast would be virtually wiped out. Eastern and National state that they would give Northeast's employees preference in their own new hiring, and that substantial numbers could obtain employment from other carriers who might assume Northeast's service obligations. They further state that inasmuch as unsecured creditors could recover, at most, four cents on the dollar in the event of an immediate bankruptcy and the stockholders have a negative equity, liquidation of Northeast would have little effect on their present position. The extent to which other carriers might offer employment to Northeast's personnel is obviously speculation, and we cannot view such an uncertain possi-

bility as a substitute in the public interest for trying to take action that will maintain their present jobs. Similarly, we do not share the unsympathetic view that the effect of Northeast's collapse upon creditors and stockholders is of little consequence. On the contrary, the possible salvaging of their positions is, in our view, a legitimate public interest [fol. 4860] consideration favoring approval of Toolco's acquisition of control.

4. The Examiner indicated that he would exclude, as immaterial, evidence going to the uneconomic and inefficient conduct of Toolco and Hughes in their relationships with TWA. Such evidence was sought to be adduced as probative on one of the issues set forth in the prehearing conference report: "What effect, if any, will the acquisition have upon the honest, economical and efficient management of Northeast?" Eastern, National and Bureau Counsel take the position that this ruling constitutes legal error and that a full hearing has not been held on the control and public interest issues under section 408. We think the Examiner's ruling is correct in light of the issues and circumstances of this case and that a hearing adequate to this case has been held. As the Examiner found, it was apparent that Northeast was in a very precarious financial situation and it would be forced to cease operation unless help from Toolco was obtained. He therefore concluded that it would be a waste of time and effort to investigate the efficiency and economy of Toolco's previous operations. In short, the condition of Northeast and the necessity for immediate help made the basic issue not whether Toolco would provide an efficient management, but whether Northeast would have any management at all. Further, the suggestion that the Examiner must pursue the question of the efficiency and economy of Toolco's management of TWA, like so many of the other suggestions and proposals, would have killed Northeast through delay just as effectively as would disapproval of the acquisition. We fail to see how the exclusion [fol. 4861] of evidence[5] pertaining to the efficiency and econ-

[5] Bureau Counsel made a motion on June 1, 1962, to strike pages 1 through 15 of the appendix to Toolco's brief to the Board, to-

omy of Toolco's management of TWA is in any way prejudicial to Eastern or National. Its worst effect would be the preservation of Northeast under an inefficient management; the only harm to Eastern and National therefrom is that which arises from the lawfully authorized competition of Northeast. In affirming the position of the Examiner, our conclusions are confined to the particular case before us. Should the question of resumption of control of TWA come at some future date before the Board and an inquiry be sought into the efficiency and economy of Toolco's past management of TWA, the materiality of such evidence in that case will be determined at that time.

In summary, the evidence here convinces us, as it did the Examiner, that the preservation of Northeast as an operating entity, with the resulting benefits to the traveling public, and to its employees, creditors and stockholders, is, on this record, in the public interest. Like the Examiner, we see no alternative to the proposed acquisition except bankruptcy. Under these circumstances, the arguments against the proposal and the various alternatives suggested, whatever weight they might be entitled to under different circumstances, are of little consequence in the over-all public interest balance.

[fol. 4862] Our findings here are limited to the control relationship presented by the Purchase Agreement that is before us. We have not considered nor do we pass upon either the route issues in the *New York-Florida Renewal Case*, or any public interest issues that may arise in connection with any future resumption of Toolco control of TWA.

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gether with all references thereto in the oral argument of counsel for Toolco. That appendix, which was in rebuttal to certain excluded evidence of Bureau Counsel, directed to the economy and efficiency question, was originally attached to Toolco's brief to the Examiner. The Examiner granted a motion to strike the appendix on May 7, 1962, and Toolco did not appeal this ruling. We will grant Bureau Counsel's motion to strike those pages of the appendix. Since we have not considered the references thereto in oral argument, those portions of the argument need not be physically stricken from the transcript.

We have given due consideration to the remaining exceptions and arguments of the parties, and find that they should not alter our decision herein.

One further matter requires comment. The conditions the Examiner would attach to approval of the acquisition would limit inter-company transactions to $200 each, with a total annual limit of $10,000. However, the conditions would except from that limitation purchases of air transportation, aviation fuel and repairs, modifications, maintenance and overhaul services, including parts and materials necessary therewith, all at prices charged to other purchasers. We find these conditions unsatisfactory for two reasons. First, the dollar limit on permitted transactions between Northeast and Toolco is too low. Second, the exemptions from the limit are too broad. We have determined that we should eliminate the restriction on individual transactions, raise the dollar limit on total annual inter-company transactions to $100,000 and eliminate all exemptions therefrom other than that relating to the purchase of air transportation at regularly published rates.[6]

In view of the foregoing and all the facts of record, we find that:

1. Performance of the Purchase Agreement, dated December 28, 1961 between Toolco and Atlas, will give Toolco control of Northeast.

[fol. 4863] 2. Toolco's acquisition of control of Northeast will not be inconsistent with the public interest and will not create a monopoly, restrain competition, or jeopardize another air carrier not a party to such acquisition, if the following conditions are met:

(a) That said approval shall be effective so long as commercial transactions between Northeast and Toolco and between Northeast and any affiliate or subsidiary of Toolco do not exceed $100,000 per year in the aggregate without prior Board approval;

(b) That Northeast shall furnish with its annual report to the Board a supplement thereto showing the total of all

[6] We are also adding certain conditions customarily included in section 408 control cases.

transactions between Northeast and Toolco and/or any affiliate or subsidiary thereof, the number of such transactions, the maximum and minimum price of items of property, the basis for such costs or charges, and the general nature of the commodities involved;

(c) That the terms of this order shall not restrict or affect the right of purchase by Toolco through Northeast of transportation from Northeast at regularly published rates;

(d) The approval of the control relationship involved shall not be deemed a determination of the fairness or reasonableness of any of the financial arrangements thereunder for future ratemaking or other regulatory purposes under the Act with respect to Northeast, Toolco or any of its affiliates or subsidiaries;

(e) The Board retains jurisdiction over the proceeding under section 408 of the Act for the purpose of imposing [fol. 4864] from time to time such other terms and conditions as it may find fair and reasonable, and for the further purpose of requesting submission of such special reports as the Board may from time to time order; and

(f) The Board further retains jurisdiction for the purpose of re-examining any of the controls herein approved, if it finds such action to be in the public interest.

An appropriate order will be entered.

MURPHY, Vice Chairman, MINETTI and GILLILLAND, Members, concurred in the above opinion. GURNEY, Member, filed the attached dissent.

[fol. 4865] GURNEY, Member, Dissenting:

The majority of the Board, on December 8, 1961 (Order E-17811) approved the advancement of funds by Toolco to Northeast Airlines upon the assumption that such financial assistance "will result in control relationships under Section 408" of the Act, and ordered a full evidentiary hearing to determine whether the acquisition of control of Northeast by Toolco is in the public interest.

In a joint dissent to this order I maintained that the Board at that time was "lacking in knowledge of many matters material to any question of approval of control."

Now the hearing has been held, but not a full evidentiary hearing as required under Section 408 of the Act. Necessary and vital information on which to base a sound decision is still absent. Therefore, I am forced to conclude that the proceeding should be remanded to the Examiner.

In the joint dissent eleven subjects were listed on which the parties could be expected to present full information. Now, even after a hearing sufficient detail on these subjects is completely lacking; therefore, I cannot join the majority in this opinion. The record is so meager that even the most essential information has not been furnished. For example, the record is not clear as to the immediate financial needs of Northeast nor as to the longer term financial requirements of the carrier. The Board should be informed [fol. 4866] whether Toolco is prepared to meet these needs, by what means, and under what conditions these needs are to be met. The Board should also be assured that Toolco will guarantee the operation of Northeast as a going concern based upon a specific plan of rehabilitation.

The most that the record shows is a statement that Toolco will use its best business judgment in promoting the affairs of Northeast. Naturally, the best business judgment is dictated by the ability and desire of Toolco to continue the operations of Northeast. Without more definite and complete information, I cannot conclude what the business judgment of Toolco might be. If Toolco is unable or unwilling to commit a definite amount of needed funds based upon a definite plan for the rehabilitation of Northeast, Toolco could permit Northeast to cease operations. Would such a consequence be consistent with the public interest? As the record now stands, Toolco has offered no plans on the future operations of Northeast. On the present state of the record, a full and complete hearing under Section 408 of the Act has not been held.

I am convinced that the vital information required could be supplied and tested within a short time and no protracted reopened hearing is contemplated by my position herein.

/s/ CHAN GURNEY

DOCKET 11620 *et al.*

The Examiner's Initial Decision Referred to Herein Is Not Attached to This Copy Because of the Wide Circulation Given at the Time of Its Release. The Initial Decision Is Attached to the Original of the Board's Opinion and to the Official Copies in the Board's Files and May Be Examined There. It Will Also Be Printed as Part of the Official "Civil Aeronautics Board Reports."

[fol. 4970]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

61 CIV. 2324

TRANS WORLD AIRLINES, INC., Plaintiff,

—against—

HOWARD R. HUGHES, HUGHES TOOL COMPANY and RAYMOND M. HOLLIDAY, Defendants,

—and—

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, METROPOLITAN LIFE INSURANCE COMPANY, IRVING TRUST COMPANY, ERNEST R. BREECH, DILLON, READ & CO. INC., BEN-FLEMING SESSEL, JAMES F. OATES, JR., HARRY C. HAGERTY and CHARLES C. TILLINGHAST, JR., Additional Defendants on Counterclaims.

ORDER TO SHOW CAUSE—February 16, 1963

On the pleadings, the pre-trial orders of this Court entered herein, the annexed affidavit of John F. Sonnett dated February 15, 1963, and on all the other proceedings heretofore had and papers heretofore filed herein, and good and sufficient reasons appearing therefor, it is

Ordered that defendants Hughes Tool Company and Raymond M. Holliday show cause before this Court at 5 P.M. o'clock on February 21, 1963, in Room 1305 of the United States Court House, Foley Square, New York, New York, or as soon thereafter as counsel can be heard, why an order should not be issued herein;

[fol. 4971] A. Providing that the complaint be amended by striking the third numbered paragraph of Section I of the prayer which follows paragraph 70 of the complaint and substituting therefor a new numbered paragraph 3 reading as follows:

"That the defendants pay to plaintiff $135,000,000, or such other sum as shall be three times the damages sustained by plaintiff, together with costs and attorneys' fees;",

and further providing that the answer of defendant Hughes Tool Company, served and filed February 13, 1962, and the answer of defendant Raymond M. Holliday, served and filed March 26, 1962, shall each be deemed to relate to the complaint as so amended; and

B. Severing from these proceedings, from and after the date of such order, the claims herein made by plaintiff TWA against defendant Raymond M. Holliday; and

It Is Further Ordered that defendant Hughes Tool Company show cause before this Court at the same time and place why an order should not be issued herein:

C. Entering, pursuant to Rules 37(b), 37(d) and 55(b)(2) of the Federal Rules of Civil Procedure, a judgment by default against defendant Hughes Tool Company in favor of plaintiff on its complaint;

D. Adjudging and decreeing that defendant Hughes [fol. 4972] Tool Company, by the conduct alleged in the complaint, has violated Sections 1 and 2 of the Sherman Act, Section 7 of the Clayton Act, and, with respect to the First Claim for relief only, Section 3 of

the Clayton Act and, with respect to the Third Claim for Relief, has maliciously and wilfully injured the business of plaintiff, and that Hughes Tool Company thereby has caused the injuries to plaintiff alleged in the complaint;

E. Adjudging and decreeing that defendant Hughes Tool Company shall divest itself of all right, title or interest in the stock of plaintiff;

F. Directing that defendant Hughes Tool Company present to this Court within 30 days from the date of such order, for the consideration of this Court in framing the final decree and judgment to be entered herein, a plan providing for divestiture by sale to the public through a bona fide public offering, within a period ending no later than one year from the date of such order, of all right, title or interest of defendant Hughes Tool Company in or relating to the stock of plaintiff, and providing that thereafter plaintiff shall have 30 days within which to submit to this Court, if it shall be so advised, proposed amendments or modifications to such plan or a proposed alternative plan; and enjoining, until such time that this Court shall have found that the divestiture by Hughes Tool Company of all its right, title or interest in or relating to the [fol. 4973] stock of TWA shall have been fully effectuated in accordance with a plan approved by this Court, defendant Hughes Tool Company, its directors, officers and employees, and all persons in active concert or participation with them who receive actual notice of such injunction, from interfering with, attacking or otherwise impairing or attempting to impair the existence, operation or validity of the voting trust established by execution of an agreement entered into by defendant Hughes Tool Company, the plaintiff, and three voting trustees, and dated as of December 15, 1960; and

G. Setting an early date for a hearing to be held before this Court solely for the determination of the amount of the damages to be paid by defendant Hughes

Tool Company to plaintiff by reason of the injuries alleged in the complaint to have been caused by Hughes Tool Company, together with the plaintiff's costs of suit and attorneys' fees; and

It Is Further Ordered that defendant Hughes Tool Company show cause before this Court at the same time and place why an order should not be issued herein:

H. Dismissing as against plaintiff TWA, with prejudice, pursuant to Rules 37(b), 37(d), 41(b) and 41(c) of the Federal Rules of Civil Procedure, each and every counterclaim asserted in the answer and [fol. 4974] counterclaims of defendant Hughes Tool Company served and filed February 13, 1962; and

I. Enjoining defendant Hughes Tool Company, its directors, officers and employees, and all persons in active concert or participation with them who receive actual notice of such injunction, from instituting or threatening to institute or causing to be instituted in any court in any jurisdiction within the United States any suit in which plaintiff, its directors, officers or employees, or any of them is a party and which contains or is based upon the allegations which are contained in said counterclaims of defendant Hughes Tool Company and from instituting or threatening to institute or causing to be instituted in any administrative or other agency within the United States any proceedings in which plaintiff, its directors, officers or employees, or any of them is a party and which is based upon such allegations; and

It Is Further Ordered that service of this order to show cause, together with a copy of the affidavit in support of this order, on Chester C. Davis, Esq., attorney for defendant Hughes Tool Company, on or before the 18th day of February, 1963, at 10 A. M. shall be deemed due and timely service.

Charles M. Meltzner, U.S.D.J.

Dated: New York, N. Y., February 16th, 1963.

[fol. 4975]

ATTACHMENT TO ORDER

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

61 CIV. 2324

TRANS WORLD AIRLINES, INC., Plaintiff,

—against—

HOWARD R. HUGHES, HUGHES TOOL COMPANY and RAYMOND M. HOLLIDAY, Defendants,

—and—

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, METROPOLITAN LIFE INSURANCE COMPANY, IRVING TRUST COMPANY, ERNEST R. BREECH, DILLON, READ & CO. INC., BEN-FLEMING SESSEL, JAMES F. OATES, JR., HARRY C. HAGERTY and CHARLES C. TILLINGHAST, JR., Additional Defendants on Counterclaims.

AFFIDAVIT

State of New York,
County of New York, ss.:

John F. Sonnett, being duly sworn, deposes and says:

1. I am a member of the firm of Cahill, Gordon, Reindel & Ohl, attorneys for the plaintiff Trans World Airlines, Inc. ("TWA"), and am familiar with the prior proceedings had herein. This affidavit is submitted in support of plaintiff's application for an order to show cause seeking the issuance herein of certain orders set forth in such application and more fully described below. This motion is brought on by an order to show cause because of the paramount importance of an early determination of the rights of TWA in the present posture of this litigation.

[fol. 4976]

2. An order is requested amending the complaint herein with respect to the First Claim for Relief to pray for a

judgment of $135,000,000 or such other amount as shall be threefold the damages suffered by TWA (instead of $105,000,000). (Paragraph A, Order to Show Cause.) As is stated in paragraph 54 of the complaint as filed, the figure of $35,000,000 was plaintiff's then first estimate of the minimum amount in which TWA had been damaged by defendants' wrongful acts. Subsequently defendant Hughes Tool Company ("Toolco") in its verified answer and counterclaims filed February 13, 1962 has estimated (paragraph 99) that TWA was damaged in excess of $45,000,000, the factors of damage listed (paragraph 98) being the same as the primary factors of damage listed in the complaint. Defendant Toolco, together with defendants Hughes and Holliday, was in control of TWA throughout most of the period when the damage was being suffered.

3. As I stated to the Court on February 8, 1963, our investigations have led us to the conclusion that the damages suffered by reason of the injury to TWA alleged in the First Claim for Relief in fact exceed $45,000,000. After trebling of this amount and addition of the more than $10,000,000 in damages prayed for in the Third Claim for Relief, TWA's total prayer for damages exceeds $145,000,000.

4. Since the filing of the complaint, the leading engineering firm of Coverdale & Colpitts has been retained to make a study to determine TWA's loss of net operating profits resulting (a) from delay in the delivery of 20 Convair 880 jet aircraft which TWA eventually got (Complaint, para- [fol. 4977] graphs 17 and 19), (b) from the diversion of 6 Convair 880's to Northeast Airlines (Complaint, paragraph 22), and (c) from the diversion of 6 Boeing 707's to Pan American World Airways (Complaint, paragraph 18). After months of intensive effort, Coverdale & Colpitts has completed its study of this matter and has advised that, in its opinion, the loss to TWA of net operating profits through delay in the delivery of the 20 Convair 880's was approximately $14,700,000; from the diversion of 6 Convair 880's to Northeast Airlines, approximately $9,000,000; and from the diversion of the 6 Boeing 707's to Pan American, approximately $20,000,000, or a total of $43,700,000.

5. Other damages suffered by TWA through defendants' acts alleged in the First Claim for Relief are still under study, including particularly the increased costs to TWA of borrowing in 1960, due (a) to the general increase in the cost of money, and (b) to the change in TWA's financial condition which made it an inferior financial risk in 1960 from the standpoint of a lender. It is believed that such damage and the other factors of damage referred to in the First Claim for Relief of the complaint will increase the amount of TWA's loss when finally ascertained to substantially in excess of $45,000,000.

6. No rights or interests of defendants will be infringed by the requested amendment of the prayer for relief since the denials contained in the answers of both defendants who are now parties can be deemed to apply to the complaint as amended in accordance with this request.

[fol. 4978] 7. An order directing the severance from this cause of TWA's claim against defendant Holliday is requested (Paragraph B, Order to Show Cause), because it appears that Holliday has not yet chosen the course of deliberate, intentional and wilful default. On the other hand, plaintiff is entitled to maintain its claims against Holliday, and to the benefit of the prior proceedings herein insofar as they relate to those claims, at least until its claims against Toolco have been finally disposed of and the judgment thereon in favor of TWA has been satisfied. A severance is the simplest means of preserving the rights and present positions of the parties.

8. The next category of orders requested by plaintiff relates to entry of a default judgment in TWA's favor against Toolco for the relief requested in the complaint (Paragraphs C-G, Order to Show Cause).

9. The Court is fully familiar with the record of wilful, deliberate and intentional refusal on the part of Toolco to comply with the Court's orders, culminating in its direct and express refusal, first through a "Notice of Position" served and filed February 8, 1963, and thereafter on the record in open court at a hearing before this Court held the same day:

(a) to produce documents ordered to be produced by this Court's order of January 10, 1963, reaffirmed in this Court's order of January 19, 1963, an appeal from which orders was dismissed by the Court of Appeals for this Circuit on January 23, 1963, and as to which all stays have long expired, (b) to produce documents ordered to be produced by this [fol. 4979] Court's order of February 1, 1963, as to which all stays have expired, (c) to submit to any further discovery whatsoever in this action on behalf of plaintiff TWA, and (d) to produce a witness for examination before trial pursuant to the order of this Court, Toolco having expressly and with full knowledge of the consequences accepted the duty and obligation to produce such witness, and neither inability to produce such witness nor any other legal excuse for such refusal being presented.

10. As the record stands, there can be no question but that on the consent of Hughes Tool Company, and based on this series of deliberate defaults, plaintiff is entitled to apply to this Court for a judgment in its favor for the relief sought in the complaint. (See Transcript of Hearing, February 8, 1963, pp. 62-63.) Defendant Toolco now stands charged by the complaint with violations of the antitrust laws and (in the Third Claim for Relief) with intentional tortious interference with TWA's business relations. It has deliberately placed itself in the position, by refusing to defend against those charges, of admitting their accuracy.

11. The legal theory upon which plaintiff here proceeds is well established and indeed long predates the adoption of the Federal Rules of Civil Procedure in which it is now clearly embodied. It rests upon the "presumption that the refusal to produce evidence material to the administration of due process [is] but an admission of the want of merit in the asserted defense." *Hammond Packing Co.* v. *Arkansas*, 212 U.S. 322, 351 (1909).

[fol. 4980] 12. By thus wilfully and deliberately refusing to comply with the orders of this Court, Toolco must, it is respectfully submitted, be presumed to have admitted the want of merit in any defense it might assert to the complaint. It has intentionally and with due reflection elected

to default rather than let the truth come out. By so electing, Toolco has irrevocably abandoned any right to contest hereafter any allegation of the complaint, except as to the exact amount of money which it is to pay over to TWA for the injury it has admittedly caused TWA, and has abandoned as well any and all alleged defenses.

13. On previous motions in this cause, and particularly in connection with Toolco's motion to dismiss the complaint which this Court denied on February 6, 1963 (the opinion on which was filed February 7, 1963), we presented to this Court not only evidence of the legal merits of TWA's charges against the defendants, but evidence that the conduct of defendants was so deliberately and intentionally wrongful to TWA that, it is respectfully submitted, the wrong cannot be remedied without granting plaintiff both the divestiture and the injunctions which it seeks. The Court is respectfully referred to my previous affidavit dated February 1, 1963 and to the exhibits (A through D) filed in connection therewith, all of which are incorporated herein as if fully set forth in this affidavit, for evidence both of the wilful character of these wrongs and of the blatant nature of the violations of Sections 1 and 2 of the Sherman Act and of Section 7 of the Clayton Act charged in the complaint. The Supreme Court has held that divestiture is the specific and [fol. 4981] most appropriate remedy for such violations. *United States* v. *E.I. DuPont de Nemours & Co.*, 366 U.S. 316 (1961). It is submitted that, on the now indisputable violations of the antitrust laws set forth in the complaint, under the *DuPont* decision divestiture is not only appropriate but required.

14. Beyond this, even on the basis of the limited documentary discovery which TWA has had since it filed its complaint, the record herein contains compelling evidence of the need for divestiture. To cite but a few examples, Hughes, in November 1960, told an important Convair figure [Crown] that in return for financial support in staving off the Dillon, Read financing plan, Hughes would have TWA meet its future aircraft needs by purchases from Convair (Exhibit A19 to my affidavit of February 1, 1963).

In February 1961 (after the voting trust had gone into effect) Hughes was questioned by Holliday and Convair about his intentions with respect to 13 Convair 990 aircraft then on order by Toolco (7 of which had been ordered after the voting trust took effect); Hughes said "It is not up to Convair to decide whether TWA will accept the so-called 97% of the airplanes. This has never been a matter for discussion. However I obtain TWA acceptance to this is my own problem; most likely HTCo will control TWA when that matter comes up" (Exhibit A35). The defendants' efforts to force these aircraft upon TWA are reflected in the report of a conference between Toolco's counsel and Dillon, Read in May 1961: "[Davis] said that we should know that his client had every intention of doing everything he could to 'bust up the Boeing deal'" (Exhibit A45). Similarly, it is patent from the other documents which make [fol. 4982] up Exhibit A that the defendants habitually exercised the unbridled power to determine when, if ever, how many, how, what and from whom aircraft were to be acquired by TWA. The Leslie "Appreciation" and Bew affidavit (Exhibits B and C to my affidavit of February 1, 1963) provide further evidence of how Toolco and the other defendants dealt with TWA and why divestiture is absolutely necessary herein.

15. Merely ordering that Toolco divest itself of all right, title or interest in TWA's stock by a sale to the public within one year is not, as experience has unfortunately and clearly demonstrated, the complete answer. Pending permanent removal of this incubus from this great airline, TWA must be free to act without those restraints and that interference which has heretofore characterized the conduct toward TWA of Toolco and those acting in concert with it. For this reason, it is submitted that Toolco must, during the interim period before divestiture is finally effectuated, be enjoined from interfering with, attacking or otherwise impairing or attempting to impair the existence, operation and validity of the voting trust which was agreed to by Toolco and which was intended to free, but has not fully freed, TWA from the vicious influence exerted by the defendants over its affairs (Paragraph F, Order to Show

Cause). Such relief would appear to be the minimum required to assure cessation by Toolco and those acting in concert with it of the wrongful acts of which they now have admitted guilt.

[fol. 4983] 16. TWA requests that a date be now fixed for the hearing on its damages before this Court (Paragraph G, Order to Show Cause). Plaintiff will be obligated to present evidence as to several different types of damage which will require it to arrange for a number of witnesses, including expert witnesses. Our present estimate is that the hearing for calculation of TWA's damages, costs and counsel fees should require no more than ten trial days, assuming reasonable cross examination of plaintiff's witnesses. The schedule to be followed in preparing for this hearing should be fixed at this time, and it is respectfully submitted that TWA's financial needs and the importance to it of securing the redress to which it is entitled are such that the date fixed should be as early as is practicable, in view of the Court's schedule, and, if possible, about one month from now.

17. The final category of orders requested by TWA relates to dismissal, with prejudice, of Toolco's counterclaims against TWA and certain injunctive relief in connection therewith (Paragraphs H and I, Order to Show Cause).

18. It is respectfully submitted that the sweeping refusal of Toolco to comply with previous discovery orders and to participate in any respect in further discovery proceedings in this litigation makes dismissal with prejudice of the counterclaims, as Rules 37(b), 37(d), 41(b) and 41(c) contemplate, the apropriate relief for TWA. The requested injunction against Toolco's raising again in some other jurisdiction or before some administrative agency the same alle-
[fol. 4984] gations which it here was unwilling to pursue (when the price of such pursuit was to let the facts be known) is closely related to TWA's other needs for injunctive relief (see *e.g.*, Paragraph G, Order to Show Cause). The propensity of Toolco and those acting in concert with it to turn to numerous forums within which to harass TWA and inferfere in its affairs is clearly evident from the alle-

gations of the complaint which Toolco can no longer contest. It is a propensity which, it is respectfully submitted, this Court should now curb.

19. No previous application has been made for the relief sought herein.

WHEREFORE, I respectfully request that plaintiff TWA's application be granted and an order issued in the form annexed.

John F. Sonnett

Sworn to before me this 15th day of February, 1963.

THOMAS J. CERNA
Notary Public

Thomas J. Cerna, Notary Public, State of New York, No. 41-0607760, Qualified in Queens County, Certificate filed in New York County, Term Expires March 30, 1963.

[fol. 5429]

In the United States District Court

Southern District of New York

Civil Action No. 61-2324

Trans World Airlines, Inc., Plaintiff,

—against—

Howard R. Hughes, Hughes Tool Company and Raymond M. Holliday, Defendants.

Deposition of Plaintiff Trans World Airlines, Inc., By Charles C. Tillinghast, Jr., Its President— January 5, 1962

[fol. 5430] Appearances:

Messrs. Cahill, Gordon, Reindel & Ohl, Attorneys for plaintiff, 80 Pine Street, New York 5, N. Y., By: John Sonnett, Esq., Marshall Cox, Esq., of Counsel.

Chester C. Davis, Esq., Attorneys for defendant Hughes Tool Company, 120 Broadway, New York 5, N. Y., By: Chester C. Davis, Esq., Maxwell Cox, Esq., Lola S. Lea, Esq., of Counsel.

Also present: Raymond M. Holliday, Bruce Bromley, Esq., Carl Rowe, Esq., Raymond Cook, Esq., Richard Gray, Esq.

* * * * * * *

[fol. 5494] Examination.

By Mr. Davis of Mr. Tillinghast.

Q. Tell us now your best recollection of how Mr. Reed described to you the problem of TWA?

A. I am not sure to what extent Mr. Reed described the problem of TWA. I was in a broad way familiar with TWA's background and its chronic inability to retain a

chief executive officer—the fact that it was frequently losing money appeared to have, or appeared to have had sort of continuous financial problems. Mr. Reed mentioned at that time some of the more recent problems which TWA was experiencing, in getting the Hughes Tool Company to carry out its commitments to make aircraft available, and the difficulties which were being experienced in getting the Hughes directors on the board to appear and constitute a quorum.

If I recall correctly, they were about to have a special meeting for which he was going to Kansas City, I believe that weekend.

Q. Referring to your answer which characterized your [fol. 5495] your understanding as to the chronic inability of TWA to retain executives, the frequency of losing money, and continuous financial difficulties, is that based on what you previously described as general information, based upon your personal experience in the aviation industry, but not based upon the knowledge of any facts, is that right?

A. It was based on the knowledge of certain facts.

Q. Will you identify the facts that you had in mind at the time?

A. I knew, for example, that there had been a parade of presidents.

Q. Describe the parade of presidents, if you please?

A. Well, there originally was Jack Frye.

Q. Are you personally familiar with the circumstances under which he left?

Mr. Sonnett: Just a minute. Which question do you want him to answer? Every time he starts to answer it, you come up with another one. If you relax a little bit and let him give you an answer, you will save your time.

Mr. Davis: I don't think it is necessary for you to refer to my relaxing. I am perfectly relaxed, as everyone in [fol. 5496] this room is perfectly aware. I don't think your remarks on the record are either necessary or called for. I have tried to be patient, Mr. Sonnett, about your references to excuses for delaying depositions, and to remarks you wish to make on the record. May I say that I think we

will save time if you will be tolerant by permitting me to pinpoint what this witness is testifying to, so that it is not necessary in future questions to go back over long answers. The witness obviously is not a friendly witness, and I would appreciate a little latitude in my efforts to get at the facts.

Mr. Sonnett: I will not permit you to interrupt the witness while in the midst of an answer by putting another question, and I will advise the witness to decline to allow himself to be badgered that way. If you want to put a question, let him answer it.

(The record was read.)

By Mr. Davis:

Q. I will withdraw the last question, and ask the witness to describe what he previously referred to as a parade of presidents.

[fol. 5497] A. Well, I knew that there had been quite a succession of presidents in TWA. I am not sure that at that point in time I could identify the names and tenures of each of them, but I knew that Jack Frye had been there, and left, that he had been followed by Ralph Damon—no, he was followed by Lamotte Cohu, I believe, and then there was Ralph Damon, and then Carter Burgess, and then there was Charlie Thomas, and anyone who was in the aviation industry, or read the public press was aware of the fact that there had been a parade or succession, or whatever you want to call it, of presidents in TWA.

One who read the press and was familiar with the industry also knew that until the jets came along, or for several years before the jets came along, that TWA had been losing money.

One had the impression—I had the impression that TWA's operations were, let us say, considerably more unreliable than those of some of its competitors. I had frequently heard TWA referred to, and indeed referred to it myself as the largest unscheduled airline in the United States. The general impression that I had was one of a heritage or problems and difficulties.

Q. Have you completed your answer now in describing [fol. 5498] the parade of presidents?

A. Yes.

Q. Do you know when Mr. Frye left as president of TWA?

A. Well, it was in the 1940s—1945, 1946, or somewhere along there.

Q. Do you know the circumstances under which he left?

A. I do not.

Q. Did you ever make an effort to inquire?

A. You mean prior to the time that we are speaking of, or since?

Q. I am speaking about the facts that you had in mind when you previously testified that at your luncheon conference with Mr. Reed, on February 24th, you were aware of the chronic inability of TWA to retain executives?

A. I don't think those are my words.

Q. Whatever the record shows that your words were?

A. The answer is, speaking as of the time of that luncheon, the answer is no, I never had any occasion to.

Q. And you had never inquired as to the reasons why he left?

[fol. 5499] A. I never had any occasion to.

Q. You next identified Mr. Damon as a successor to Mr. Frye? I believe you mentioned someone in between.

A. Lamotte Cohu.

Q. Do you know how long he was president of TWA?

A. Do I know now, or did I know then?

Q. Then?

A. No.

Q. Do you know now?

A. Yes.

Q. When did you find out?

A. One day when Mr. Cohu came in and talked with me.

Q. And you described at that time the succession of presidents of TWA?

A. At which time?

Q. At the time Mr. Cohu was there?

A. No.

Q. Do you know the circumstances under which that gentleman left TWA?

A. I know what he told me.

Q. What did he tell you?

A. He told me he couldn't get along with Mr. Hughes.

[fol. 5500] Q. When was this that he told you this?

A. I can't remember, Mr. Davis. He dropped in one day on his way to Europe, just to say hello, and we talked for half or three-quarters of an hour in my office.

Q. At TWA?

A. At TWA.

Q. Was this recently?

A. This was, I would say, in the summertime. I can't remember the exact date. I don't know whether it is shown in my calendar, or not.

Q. Will you look at your calendar and see if you can identify the date.

A. No, I don't see anything on here, Mr. Davis, that would fix the date.

Q. Was it before or after this lawsuit had been commenced?

A. I believe it was after the lawsuit had been commenced.

Q. Were you making an effort in that conversation to develop facts or material to support the contention asserted in that lawsuit?

A. No, I wasn't, Mr. Davis. I was having a social conversation with Mr. Cohu, who dropped in to pay his [fol. 5501] respects.

Q. What else was the subject of discussion in that three-quarter of an hour conference?

A. Well, very little sticks in my mind, except that he was on his way to Europe. He had stopped in to say hello. He had a great affection for TWA, and a lot of its people. It was on the whole a light and social conversation, and after he had been there, I would say a half or three-quarters of an hour, he said goodbye, and "drop in again," and it's awful nice to make your acquaintance.

Q. The conversation was more of a casual social discussion?

A. It was entirely.

Q. How did this remark come about to take place, about the difficulties he had with Mr. Hughes?

A. He was telling about some situation where he had some program set up, and frankly, I can't remember what the program was at this time, and at the last minute, Mr. Hughes interjected himself in the situation. There apparently was some substantial disagreement between them, as to who was going to run the operations, and he took the position that if he was going to be the president, he was going to run it. As I recall his words, he said he decided [fol. 5502] then and there that they weren't going to be able to get along. I believe shortly after that, a Convair situation opportunity came up, and he left.

Q. But whatever the discussion or conversation was, you did not regard it of such importance to note down the facts disclosed to you at the time?

A. No.

Q. Did you report that to your counsel as some material that would be of material importance in this litigation?

Mr. Sonnett: Just a minute. How far do you propose to go in terms of what he said to his counsel?

Mr. Davis: At this point my question is whether or not he reported it to counsel?

[fol. 5503] Mr. Sonnett: I don't propose to let you start on the subject of conversation between Mr. Tillinghast and his counsel.

Mr. Davis: I am not asking for the conversation between Mr. Tillinghast and his counsel. I am asking at this point merely whether or not he reported it.

Mr. Sonnett: I object to the question on the ground it called for privileged information, and instruct the witness not to answer.

By Mr. Davis:

Q. You refuse to answer, Mr. Tillinghast?

A. I do.

Q. Did you think as a lawyer, with your background and experience, that what was disclosed to you in this casual or social meeting you had, was a disclosure of important facts?

A. Not terribly important, no. I might say it came as no surprise to me. It was a casual, social conversation, and I made a mental note of this, and made no written memo or record, or anything like that.

Q. Have you now fully described your total recollection of what you were told at that meeting, relating to the relationship of the gentleman with Mr. Hughes while he was [fol. 5504] associated with TWA?

A. As far as I can now recall, yes.

Q. And so far as you know, there are no writings of any kind anywhere that might further refresh your recollection as to what took place at that conference?

A. That's correct.

Q. And you have no recollection as to how the subject of his relationship with Mr. Hughes came about, in this social meeting?

A. No, I don't remember just what led up to it.

Q. And there was no business purpose whatever in that call?

A. That's correct.

Q. He dropped in on you unexpectedly?

A. He did.

Q. The next gentleman you referred to in this parade of presidents was Mr. Damón?

A. Yes.

Q. Are you famillar with the circumstances relating to the tenure of Mr. Damon as president of TWA?

A. Was I then or am I now?

Q. Well, start with were you then.

A. No.

Q. With your experience in the aviation industry in [fol. 5505] February of 1961, you did not know anything about what had happened with Mr. Damon at TWA, is that right?

A. That is not what I said, Mr. Davis.

Q. What is your testimony as to your understanding of the circumstances relating to Mr. Damon, which caused you to identify him as part of this parade of presidents?

A. Well, I knew that he had been president of TWA for a period of time. I knew that he died in office.

Q. Do you know for how long a period of time he was president of TWA?

A. Did I then know?

Q. In February 1961.

A. No, I did not.

Q. At the time of your luncheon with Mr. Reed?

A. I did not know exactly how long he had been president.

Q. Did you subsequently find out how long he was president of TWA?

A. Yes.

Q. When did you find that out?

A. I can't tell you exactly, Mr. Davis. I have had many conversations in the last few months with people in TWA about who was there, and when he was there, and this, that [fol. 5506] and the other thing, and have acquired a miscellany of knowledge, and I couldn't possibly remember exactly when I learned these things.

Q. Was this information you obtained in connection with your preparation for your testimony in connection with this case?

A. No, casual conversation.

Q. Can you identify with whom you had casual conversations relating to the tenure of Mr. Damon as president of TWA?

A. I probably had conversations with Mr. Leslie and Mr. Cocke, and Mr. Hall. If I had to say who first gave me the information as to how long he was there, I would guess it was Mr. Leslie, but I wouldn't be certain about it.

Q. Without attempting to identify who first told you how long he was there, describe to me what was said to you, either by Mr. Leslie or Mr. Cocke, with respect to the tenure of Mr. Damon as president of TWA?

A. I can't ascribe this to any particular person, and indeed at the moment I can't tell you his exact tenure, but I know that it was a tenure of five years, more or less, in the early '50's.

Q. You mean he remained president of TWA until [fol. 5507] he died?

A. Yes.

Q. In this so-called parade of presidents, I think you mentioned next Mr. Burgess?

A. That's right.

Q. Will you tell me what is your understanding of the tenure of Mr. Burgess?

A. What was it at the time of my conversation with Mr. Reed, or what is it today?

Q. The same as before—both. At the time of your conversation with Mr. Reed, namely, in February of 1961?

A. At that time I knew only that it had been a very brief tenure.

Q. Did you know the circumstances under which he took the position or left it?

A. I knew a slight bit about him, yes.

Q. What did you know?

A. I knew secondhand that he had left before completing, I believe, a year, as a result of an inability to run the company under Mr. Hughes' aegis.

Q. You say you obtained that information secondhand. From whom did you obtain that information?

A. I would say from two sources; one, general conver- [fol. 5508] sation in the industry, and secondly, from Mr. Spater, whom I have known for many years, and who was very unhappy about Mr. Burgess leaving, and the circumstances under which he had left.

Q. You discussed that with Mr. Spater prior to February 1961, is that correct?

A. At some time, yes.

Q. Do you recall when?

A. No, I wouldn't have any recollection of that.

Q. Can you tell us the substance of what Mr. Spater told you?

A. Merely that it was very unfortunate that Carter Burgess—that he was a very able man doing a good job, and that it was unfortunate that he wasn't able to get along with Mr. Hughes and do the job that he otherwise could do. That is the substance of it.

Q. Do you recall about when or where this conversation took place?

A. I have no recollection, Mr. Davis. I have known Mr. Spater socially for twenty some years, and we see them—

we see he and his wife occasionally, and I am sure it was on some social occasion.

I can further identify it, that it must have been some [fol. 5509] occasion relatively soon after Mr. Burgess left, when it was, let us say, topical.

Q. Do you know about when that was?

A. Mr. Burgess left in 1957, I believe.

Q. Your best recollection is that you had a conversation with Mr. Spater some time in the latter part of 1957?

A. I wouldn't be that exact.

Q. 1957 or 1958?

A. Some time after Mr. Burgess left.

Q. And this was also in connection with a social occasion?

A. It would have been entirely a social occasion, yes.

Q. Do you recall how the subject came up?

A. No, I haven't any very specific recollection of it, Mr. Davis.

Q. Do you have a more specific recollection as to just what Mr. Spater said to you, and what you said to Mr. Spater?

A. No, I don't.

Q. At the time didn't he impress you as being particularly important?

A. This was just social talk. I knew he was involved in and interested in, TWA and at that point I had no interest [fol. 5510] in TWA, and it was just social talk.

Q. Following the meeting with Mr. Reed, when you had this background information about Mr. Burgess and Mr. Damon and Mr. Frye, did you make any effort to inquire or find out what had happened with respect to this parade of presidents?

A. Yes, I did.

Q. Will you describe what you did, and who you went to, and the nature and scope of your investigation of the facts?

A. Well, I had lunch with Mr. Spater and Mr. Burgess one day.

Q. When was that?

A. It was a Sunday, and I would guess it was either the 5th or 12th of March, but I can't be sure which.

Q. Where?

A. At Mr. Spater's residence.

Q. Was this a social occasion?

A. It was a social occasion for a purpose.

Q. What was the purpose?

A. The purpose was to give me an opportunity to talk with Mr. Burgess about TWA.

Q. Were just the three of you involved in this luncheon? [fol. 5511] A. And our wives.

Q. And this discussion took place in the presence of your wives?

A. In part, although I don't think they were very interested in it. I think they were more interested in talking about some other things.

Q. Who suggested having this luncheon meeting?

A. Mr. Spater suggested the particular meeting. I had asked Mr. Spater if he thought that he could arrange for me to talk with Mr. Burgess, whom I had never met before that time, and it ended up that he asked the Burgesses and Tillinghasts to lunch on Sunday out in Ardsley, and we had a very pleasant luncheon and discussion of TWA problems.

Q. As I understand your testimony, Mr. Tillinghast, this was a luncheon which was arranged by Mr. Spater at your request, or at your suggestion?

A. I hadn't suggested the luncheon. I suggested that he see if I could arrange to talk with Mr. Burgess, and the luncheon was his way of doing it, I guess.

Q. Will you now describe what took place or what was said at this meeting?

A. Well, we discussed a great many subjects relating to TWA, and the particular question that I was curious to [fol. 5512] find out, to get their views as to, was whether or not there was any reason they knew of that one who became chief executive of TWA, and had the freedom to operate as a chief executive should, could not make a success of TWA.

We discussed the problems that TWA had, the problems that the industry had, the fact that 1961 might be a pretty hard year for the industry.

We discussed the problems that Mr. Burgess had, what led to his resignation, what he thought of the airline indus-

try and its future, and let us say a good many related subjects.

Q. Will you take each one of those subjects that you consider of some significance or importance, and give us your best recollection as to what was said by Mr. Spater or Mr. Burgess or by you.

A. Well, so far as I was concerned, I was mainly a listener and asker of questions. They did the great majority of the talking. On the subject of Mr. Burgess leaving, he said that he had general problems and specific problems. The general problem was that it became increasingly difficult for him to operate the airline as he thought it should be operated, free of interference.

There developed a period of time shortly before he re- [fol. 5513] signed, when his days were spent in trying to run the airline, and his nights in talking on the telephone. Apparently he had telephone conversations of substantial duration night after night, beginning apparently 12:00 or 1:00 or 2:00 in the morning, and it got to the point, as I recall it, that they took the telephone off the hook when they went to bed at night.

There was a particular problem of a 1649 aircraft that was supposed to be in the schedule, and wasn't in the schedule, and there were repeated promises to return it, and it wasn't returned, and, as I recall it, he went to some meeting of the CAB, where he expected to be asked about this, and had a specific promise that the plane would be back before this meeting, and he went to the meeting and said it was back, only to find out in fact, that it wasn't.

Without being able to remember exactly everything that was said, and all the embroidery on it, it seemed clear to me that the reason he resigned was that he came to the conclusion that it just wasn't in the cards for him to run the airline free of sporadic interference, and the necessity for endless telephone conversations. He decided that was [fol. 5514] just too much, and there were better ways to make a living.

Q. The nature of the interference to which he was referring was in the receiving of telephone calls late at night?

A. That was one aspect of it.

Q. Any other aspect that you can identify?

A. Oh, yes. As I understand the situation, as I recall it—

Q. You are recalling what he told you at that meeting, is that right?

A. Yes, although I must say that I am not sure I can sort out what he said and what George Spater said entirely. Most of this Burgess himself said, but there was a general conversation, and exactly who said what would be hard for me to recall at this point.

Q. Excuse me for interrupting, but was that during the luncheon period when your wives were present?

A. This was both before lunch and during lunch—more before lunch than during lunch.

Q. Was it the period before lunch when you were having cocktails?

A. Yes.

Q. And your wives were there having cocktails with the gentlemen?

[fol. 5515] A. That's right.

Q. And it was during this cocktail hour—

A. That the major part of the discussion took place.

Q. Where Mr. Burgess was explaining some of the more pleasant experiences he had had at TWA?

A. That is your characterization.

Q. Was it in the form of anecdote telling, or was it a presentation of some kind?

A. It wasn't obviously a formal presentation. It was a discussion of his experiences and why he had left, and whether he thought that I would have any better fortune than he had had.

Q. This was before you had made up your mind as to whether or not you were going to accept the position being offered to you?

A. That's correct.

Q. Had you disclosed either to Mr. Spater or Mr. Burgess what decision or conclusion you had come to?

A. I hadn't, because I hadn't come to any conclusion.

Q. You were still considering in your own mind whether or not you would be interested in becoming the president of TWA?

A: That's right.

[fol. 5516] Q. And your interest in this conversation was to get the feel of what it might be like to be president of TWA? Was that your basic purpose of objective?

A. Well, in a sense. I wouldn't describe it exactly that way, but I guess that is substantially true.

Q. Can you recall any more incidents or specific event relating to this interference wih Mr. Burgess as chief executive?

A. Yes. Another thing he talked about was that he wasn't sure of the loyalty of some of the people in the organization.

Q. Which organization are you referring to now?

A. TWA.

Q. Did he identify the people whose loyalty he was not sure of?

A. As I recall it, he did not. He mentioned that some of the people were on the Hughes Tool payroll, and that there were others that he wasn't sure about, and he said one of the problems that you are going to have to be concerned with is the problem of how many people are loyal and faithful, and how many people are beholden to others.

Q. He did not identify those people at the time?

A. No, I am quite sure he did not.

[fol. 5517] Q. You would have remembered if he had?

A. I think so. As I recall the conversation, I didn't press him on it because in that posture of things I didn't want to embarrass him as to who they were. I might say in retrospect, from his reference to someone on the Hughes Tool payroll, I presume he was speaking of Mr. Rummel, I might say of whose loyalty I have no doubts.

Q. But you got the definite impression that there might be some people on the TWA payroll who might not be completely loyal to TWA's interests, is that right?

A. That is what he said.

Q. And he got the definite impression that was the situation which might exist at TWA?

A. That is what he said.

Q. Did you believe him at the time?

A. Of course. Why would I not believe him?

Q. Would you at this point describe what you did when you did become president of TWA to determine or ascertain who might be on the payroll of TWA who was not entirely loyal to the interests of TWA?

A. I did nothing.

Q. Nothing at all?

A. Nothing at all.

[fol. 5518] Q. Did anything occur between the conversation you had with Mr. Burgess and today to satisfy you that Mr. Burgess was in error as to his contention?

A. I ascertained that Mr. Rummel, who had been in the position of working half for Mr. Hughes and half for TWA, had severed his Hughes connection, and was working entirely for TWA. I felt that when I took office that it would be a mistake for me to go in and start snooping around and create the impression that I didn't have confidence in the loyalty of the people in the organization, and I would rather make the mistake of overlooking some disloyalty than to create a general feeling of suspicion and concern. For that reason I have done nothing in the way of a witch hunt or a search for those who are unfaithful.

Q. But you believe there are some there who are unfaithful to the interests of TWA?

A. I have no reason today to think there are.

Q. So you think Mr. Burgess was in error when he said to you at this luncheon conference that there were a number of people, or there might be a number of people whose loyalty to TWA might be questioned?

A. I think circumstances have changed.

Q. What circumstances have changed relating to the [fol. 5519] loyalty of employees to the interests of TWA?

A. You have no longer the situation that you used to have where Mr. Hughes used to personally contact various people in various echelons of the organization and deal with them directly. Under those circumstances, in my view, you are much more apt to get a lot of divided loyalties or disloyalties than you are under the present situation.

Q. What did you do to satisfy yourself as to the loyalty of Mr. Rummel?

A. I observed Mr. Rummel, with whom I have had a great many contacts, and who, in my opinion is entirely loyal.

Q. Loyal to whom?

A. TWA.

Q. Or to you, Mr. Tillinghast?

A. TWA, and to me as its chief executive.

Q. Will you describe, at least in a general way, what was said between you and Mr. Rummel, or what Mr. Rummel did, that satisfied you as to his loyalty to TWA, as distinguished from any loyalty that he might have to you personally?

A. Mr. Davis, as you know, we have had this question of what sort of equipment we were going to buy, and I have [fol. 5520] spent many, many hours discussing with Mr. Rummel what TWA ought to do, and what would be in the best interest of TWA, and I have been impressed by the fact that Mr. Rummel is motivated entirely by what he considers to be in the best interest of TWA and in calling the shots as he sees them.

Q. Going back to that luncheon conference at the home of Mr. Spater, and the statements made by Mr. Burgess during this luncheon that you have identified and described, did Mr. Burgess describe the disagreement he had had with the Hughes Tool Company over the building of the $17 million jet overhaul addition at Kansas City?

A. No, he did not.

Q. Did you subsequently find out that there had developed a very strong difference of opinion between the Hughes Tool Company and Mr. Burgess as to the need and desirability of such an expenditure?

A. I understood later on that there had been an issue on this subject.

Q. Did you subsequently discover to your satisfaction that such a project would have been totally unnecessary?

A. No, I did not, Mr. Davis. I have not gone into the [fol. 5521] thing with great thoroughness, because it is somewhat academic at the moment, but I discern that there was a difference of opinion in the organization as to whether it should have been done or should not have been done.

Q. You understand that there was a difference of opinion within the TWA organization as to whether it should or should not have been done?

A. That's correct.

Q. And you understood that Mr. Burgess was one of those who believed that it should have been done?

A. That's correct.

Q. And that he wanted to spend $17 million to build an addition to a jet overhaul maintenance station at Kansas City?

A. I don't remember the exact figure, but I know that he wanted to enlarge the overhaul facility at Kansas City, and that was an issue between him and Mr. Hughes.

Q. And you understood that the Hughes Tool Company was opposed to such an expenditure?

A. I understood that Mr. Hughes personally was opposed to the expenditure.

Q. And that he was representing a very substantial stock [fol. 5522] interest of TWA when he was opposed to it?

A. Well, that goes without saying.

Q. As a result of this investigation, or the facts that came to your attention, is it now your understanding that Mr. Burgess left TWA basically because of this major difference of opinion?

A. Because of the major difference of opinion over the overhaul base?

Q. Yes.

A. No, it is not.

Q. That is not your present understanding?

A. That is not my present understanding.

. . . . . .

[fol. 5542] Q. Will you please explain what you mean by the hard sell and by the TWA situation that Mr. Breech was describing to you?

A. Well, he started out, as I recall it, by explaining what I more or less knew, and that is that he had been asked to interest himself in this situation; that he had done it out of a sense of obligation and national duty; that he had had early interest in TWA. That when he was assistant general treasurer at General Motors he had been very active and had indeed been a director of TWA and of Eastern, and I think there were a couple of others, and he was in that activity at the time of the mail contract cancellations.

I remember he went through each of those one by one. He explained that he felt that TWA had great potential that

had never been realized, and he said that since he became a trustee he had had many occasions to ride the line. He was then living in Phoenix, and he said, "You would just be amazed at the number of people who have come up to me and said, 'How grateful we are that at last we have an independent group in control of TWA,' and it has great appeal and a great future, and if it were just given the opportunity to move ahead and to be like the other airlines, [fol. 5543] we will make tremendous progress, and we will be the best airline in the business."

He said in response to my statement that I thought TWA had an unusual lot of problems, and that one ought to be pretty restrained about inviting himself into that situation, he said, "Well, it is not nearly as bad as the Ford Motor Company was when I went to the Ford Motor Company in 1947. After I had been there for three months, I said to myself, how could you be so foolish as to get into this situation?"

He said, "But we stuck it out, and now look at what the Ford Motor Company is. I don't know how many years before I went in they had lost so many millions of dollars, and after I went in, they made so many billions of dollars, of aggregate profit, and we can do the same thing at TWA."

He said, "My understanding with those who elected me voting trustee or made me a voting trustee is that I will not be active in the management. I have had that understood. I will be on the board of directors, and if the chief executive wants it, I will be happy to be chairman of the board, but I expect the chief executive to run the company, and I will give every help that he wants, but I won't get in his hair." [fol. 5544] I kept asking him repeatedly, "What are the problems? What are you looking for? I have no airline experience."

He said, "We are looking for just one thing, and that's leadership. There are a lot of very able-bodied people in TWA, and all they need is cohesiveness and leadership and an opportunity to prove themselves."

I might say that I stated it rather quickly here. We went over this a good many times, and I kept asking, "What are the problems? What sort of talent do you need?"

He kept coming back to the fact by saying, "All we really need is leadership. We have got the people that know the airline business. They are wonderful people. They have been there for years, but they need leadership, and they need to be brought together, and they need consistency and an opportunity to do their job."

Q. I believe that you said in the beginning of your answer that Mr. Breech indicated that he had been asked to do something. Would you mind identifying or explaining what Mr. Breech had been asked to do?

[fol. 5545] A. I think what you are referring to is, I said he had been asked to be a voting trustee. He said that he had told the people who asked him to be a voting trustee that he would not be active in the management of the business.

Q. Did he identify who it was who had asked him to be a voting trustee?

A. He mentioned Grant Keehn and Harry Hagarty. I believe it was Grant Keehn with whom he had most of his conversations.

Q. I am asking you now for your best recollection of what took place at this meeting at the Ritz Tower Hotel, that lasted for an hour, an hour and a half.

A. I have given you my best recollection.

Q. That he said Grant Keehn had asked him to become a voting trustee? Is that your recollection?

A. Yes, I believe he said that Grant Keehn had asked him to become a voting trustee. He said no, he would not become a voting trustee, but would become a director; that subsequently Grant Keehn had called him again, and somebody—I can't remember who it was—who was scheduled to be a voting trustee had backed out, or something or other, and Grant Keehn had said, "You have just got to help us out here."

[fol. 5546] And so he agreed to become a voting trustee, I think he said, for a period of a year.

Q. In your prior answer I believe you also referred to some statements by Mr. Breech to the effect that he recognized an obligation in the sense of a national duty.

A. That's correct.

Q. Or words to that effect.

Will you identify or describe or give me your best recollection as to what Mr. Breech said to describe what obligation, what sense of national duty he was talking about?

A. I remember he said that he was—I think he was receiving $20,000 a year as a voting trustee, and he said, "Obviously, after taxes, this doesn't mean anything to me from a financial standpoint."

I believe he digressed and talked about what some other people—I think—I may be wrong—I may have the wrong day—but what the people who were looking for a president for Chrysler were prepared to pay him, but he said, "I am retired, I don't want to be a chief executive. I have undertaken this more out of a sense of national duty than anything else. I think it is a shame that something as large and [fol. 5547] as important as TWA has become somebody's plaything," and that he felt an obligation that had been presented to him by Grant Keehn as an obligation to provide proper management for TWA.

Q. From what he said were you able to recognize to your satisfaction this sense of national duty or obligation?

Mr. Sonnett: Come on, Mr. Davis.

A. Yes.

Q. Will you please describe what your understanding was of the national duty or obligation that Mr. Breech felt he had towards TWA?

A. Well, simply that TWA had about 20,000 employees, that it was one of the major airlines in the United States and that it was in the public interest that it be run well.

Q. Did he disclose to you at that time whether he had any financial interest in TWA?

A. I wouldn't remember. I think at one point he told me that he had a relatively small amount of stock for him, but I can't remember whether it was at this time or some other time.

Q. You don't recall inquiring of him as to whether or not he had or intended to acquire any substantial financial [fol. 5548] interest in TWA?

A. No, I don't recall discussing that with him.

Q. Do you recall whether or not he inquired whether or not you might be interested in acquiring or investing any sum of money in TWA by acquiring its stock?

A. Well, yes and no. What he did say was that TWA was planning to have a stock option plan, and that probably he would recommend that I have a stock option, and then he told me about how much money he had made at Ford as a result of having a stock option, and I allowed as how I didn't think the airline business was comparable to the Ford Motor Company, and I wasn't going to make any decision on the illusion that if I had a stock option from TWA I would get as rich as the people who had gone into the Ford Motor Company in 1947.

Q. Was there any further discussion at that particular meeting of the contemplated or probable compensation which you might expect?

A. I don't recall that there was that night, Mr. Davis, but when Mr. Breech talked with me on the phone from Kansas City he had mentioned that the salary would be $75,000 or $80,000.

[fol. 5549] Q. You are referring to a telephone conversation from Mr. Breech? Was that the prior one you referred to, where Mr. Reed introduced Mr. Breech on the line?

A. That's correct.

Q. And at this meeting at the Ritz Tower Hotel did you pursue that aspect of the job?

A. I believe that the matter of compensation was mentioned. It wasn't discussed in any depth.

Another thing he said was that he would recommend that they give me the type of contract that he had had at the Ford Motor Company.

Q. When he said that they would recommend, who was he referring to?

A. I guess himself and George Brown, who was there.

Q. Was George Brown present during this entire meeting?

A. He was.

Q. Did he participate in the discussion at all?

A. To a very limited extent. Frankly, he didn't get much opportunity to talk, because Ernie and I were doing most of the talking.

Q. I believe in one of your prior answers you stated that [fol. 5550] Mr. Breech made a statement to the effect that now that the airline—or that an independent group was in control of TWA—did Mr. Breech identify the "independent group now in control of TWA"?

A. Well, he gave me the list of the new directors. He told me who the new directors were who were on the board, and he said they were all outstanding men, and wonderful fellows, and he was sure that I would like them and they would like me, and that's about all I recall on that.

Q. Did he describe how those new directors had been selected or who had selected them?

A. Yes, he said they had been selected by the voting trustees.

Q. Did he identify which voting trustees had participated in that selection?

A. Well, I can't really answer that. I understood him to mean Irving Olds and also—

Q. But at the time of that meeting what was the extent of your familiarity with the voting trust or the voting trust arrangement or what had transpired at TWA?

A. Well, when I had met with Mr. Reed on Friday, if I recall correctly, he had given me a copy of the order of the [fol. 5551] CAB and a copy of the voting trust agreement.

Q. Did he say anything in connection with handing you those documents as to why he was giving them to you or what to look for in there, or anything of the kind?

A. Well, he explained what had happened.

Q. What did he say to you?

A. Well, he said that I ought to read the order of the Civil Aeronautics Board that had approved the present setup, and that that spelled out the nature of the setup and some of the problems that TWA had, and he gave me a copy of the voting trust and said, "You will probably want to read the voting trust agreement itself."

Q. Did you do that?

A. I did.

Q. Both the order of the CAB and the voting trust agreement?

A. That's correct.

Q. Did you have occasion to discuss it with Mr. Reed subsequently, as to its meaning, impact or probable effect?

A. Yes, I probably discussed that a couple of times with [fol. 5552] him, not so much the voting trust as such but the question with which I wasn't then familiar, of the position of the Civil Aeronautics Board in the situation.

Q. Isn't it a fact, Mr. Tillinghast, that both Mr. Reed and Mr. Breech, or either of them, in effect said to you that they had plans or intentions of keeping control of TWA for some good, long period of time?

A. No, it is not, Mr. Davis.

Q. Weren't you interested in knowing how long this control situation at TWA was likely to last?

A. I certainly was.

Q. But you made no inquiry in that regard toward either Mr. Reed or Mr. Breech?

A. I did make inquiry.

Q. At that time?

A. Yes.

Q. Now tell me what you said and they said to you in that regard.

A. I don't recall particularly discussing this with Mr. Breech, but I did discuss it with Mr. Reed.

Q. At the luncheon?

A. No. I think this was some time after the luncheon, [fol. 5553] after I had read this material, and I said, "Obviously one thing I would be interested in is how long this thing is likely to last and how stable it is apt to be."

I discussed the question of the power of the Civil Aeronautics Board and what its jurisdiction was.

I read in the voting trust the repayment provisions and the provisions as to the term of the voting trust, and personally came to the conclusion that no one could be very positive as to just how long this thing would last.

Q. Did Mr. Reed call to your attention the provision for a 22 per cent penalty for the repayment of the notes held by the insurance companies?

A. I don't recall that he mentioned it, Mr. Davis. I noted it.

Q. You did note it?

A. I did note it.

Q. Did you have occasion of inquiring of anyone as to what its purpose or the purpose was for such a penalty provision?

A. I don't believe I did. I thought it was pretty obvious.

[fol. 5554] Q. What was obvious?

A. The purpose of the provision.

Q. What obvious purpose occurred to you when you read about that provision?

A. Well, I presumed—let me first say that repayment premiums are quite common from my own experience.

Q. In that amount?

A. May I finish?

Q. Certainly.

A. They are quite common in financial arrangements of this sort. This was somewhat larger than any one I had had any experience with before, and I presumed that the reason for it was that the financial institutions thought that they were taking a substantial risk in this situation and did not want to be in the position where, if it turned out to be good, it would be refinanced and they would be out of it, and if it turned out bad, they would have a bad investment on their hands.

That is what I have assumed.

Q. You didn't discuss it with anyone?

A. No.

Q. My understanding of your testimony, Mr. Tillinghast, [fol. 5555] is that you had this luncheon with Mr. Reed on Friday, the 24th?

A. That's correct.

Q. And that this meeting with Mr. Breech and Mr. Brown took place on Tuesday, the 20th of February?

A. That's correct.

Q. And between the 24th, when you had luncheon with Mr. Reed in New York, you received a call from Mr. Reed from Kansas City?

A. Yes.

Q. Do you know what the purpose was for Mr. Reed being in Kansas City?

A. I believe he was there for a special meeting of stockholders.

Q. As a result of your conference with Mr. Reed did you indicate to him that you wanted to pursue this matter further with Mr. Breech personally?

A. When was this, Mr. Davis?

Q. As a result of this luncheon meeting on the 24th of February.

A. I don't think I did at that time. I think that was still an open question until Mr. Reed and Mr. Breech called on Sunday, which must be the 26th.

Q. At the meeting at the Ritz Tower Hotel on the 28th [fol. 5556] of February, you have no recollection of a further discussion with Mr. Breech as to the probable length of time that this so-called independent group would remain in control of TWA?

A. No, I don't, Mr. Davis. I won't say that it wasn't discussed, because it was a matter of some obvious interest to me, but I don't recall having a specific discussion of it.

Q. By the time of that meeting you had read the voting trust agreement and this order of the CAB furnished to you by Mr. Reed, had you not?

A. Yes.

Q. Is it fair to say that in view of what you knew through the newspapers and generally as to the control of TWA it was a matter of great concern to you, was it not?

A. Yes, it was. As a matter of fact, I want to change my answer, because I do recall one conversation.

One of the things that I remember that was discussed that evening was that Mr. Breech said that he felt quite confident that whatever happened to the voting trust, the Civil Aeronautics Board would not permit Hughes to regain control.

I remember we did have a discussion about the fact that [fol. 5557] I said that whatever the Civil Aeronautics Board may say today, you never can be sure of what a political body, perhaps with different people on it, under a different administration, may do in a year or five years or ten years.

Q. And how did Mr. Breech answer that?

A. As I recall it, he said he didn't think that they were going to do it.

He said, "This thing is too big to be someone's plaything."

He felt it was so clearly against the public interest that no Civil Aeronautics Board would permit Hughes to regain control.

Q. Are you quite sure that at that meeting, Mr. Tillinghast, Mr. Breech did not indicate other ways and means in which the return of control to the stockholders, Hughes Tool Company I am referring to, would be achieved?

A. I am not sure I understand your question, Mr. Davis. Do you want to be more specific?

[fol. 5558] Q. Are you quite sure that at that time Mr. Breech did not disclose to you other ways and means which were available to prevent a return of control to the Hughes Tool Company?

A. I am quite sure.

Q. You are quite positive of that?

A. Yes. There were just two things discussed, one of which I have already described, and then the obvious question of whether or not the thing could be refinanced.

Q. That was discussed?

A. Yes.

Q. Now tell me what was said in connection with the feasibility or probability of the thing being refinanced?

A. The discussion, as I recall it, was simply that a general statement, I believe, by Mr. Breech, although I would not be positive of this—Hughes had made every effort to find alternate means of financing this, and that he very much doubted that having failed to do so, he was going to be any more successful in the future.

Q. Was that the actual extent of it?

A. That is all I recall, Mr. Davis.

Q. Do you recall specifically referring to the 22 per cent penalty provision?

[fol. 5559] A. Well, I am sure that the 22 per cent, the amount, whatever the exact amount was that he would have to pay back, was discussed, and the fact that if he could not pay the lesser amount, he would not be successful in paying that plus 22 per cent.

. . . . . .

[fol. 5575] Q. These conversations that you had then with Mr. Reed intermittently from the 28th of February until

March 14th, what was the nature of those telephone discus-
[fol. 5576] sions? What were you exploring?

A. I should say that during that period, I had occasion to go in each case, if not with Mr. Reed, in the company of Mr. Reed when I got there—to visit Mr. Hagerty, Mr. Olds and Mr. Hood, and at two of those meetings Mr. Sessel was present.

Q. Was there any suggestion at this meeting of the 28th, at the Ritz Tower, that it would be necessary and advisable if you were interested in the position, of meeting any of those gentlemen?

A. I don't recall that anything specific was said at that time, but within a week Mr. Reed called me and suggested that I ought to arrange to see some of the other people that were directors and were interested in the situation, and took me around to see them.

I should say that one of the things I was concerned about at that point was the fact that from what I knew of the situation, TWA was still very short with respect to a jet fleet. I was concerned about the problem of how TWA was going to reach a position with its competitors in the matter of jet aircraft.

I discussed this at one point with Mr. Reed. I will have to go back and say that I am quite sure—I think at the [fol. 5577] meeting of the 28th that I raised the question of how TWA was going to move ahead in the jet picture, and was told that the financial institutions had said broadly that when, as and if TWA had a stable management, they would be glad to discuss a further equipment program.

In one of my conversations with Mr. Reed, I said that I was concerned about this. That it seemed to me that unless TWA was able to arrange to acquire further jets, that it indeed had a very serious problem, and what assurance was there that the financial institutions would, in fact, make further funds available. His answer was that probably the best thing to do was to talk with the financial institutions themselves, and see what they have to say about it.

He set up a meeting in Mr. Hagerty's office at which were present, as I recall, Mr. Hagerty, Mr. Jenkins, Mr. Keehn, Mr. Sessel, Mr. Reed and myself. I suppose that their interest was in taking a look at me, and my interest was in

committing them as far as I could under the circumstances to a further round of jet financing. We had this meeting, I believe, on the 6th of March in Mr. Hagerty's office, at which we discussed the general situation, and at which I [fol. 5578] specifically brought up this question of it seemed to me TWA was going to have the greatest difficulty getting by if they didn't get more jets, and what was their view of the ability of TWA to get further financing for jets.

Their answer was in the typically guarded manner of financial people, that they couldn't make any commitments, but when, as and if TWA had a president and a stable management, that they would be happy to sit down and discuss the situation, and that indeed discussions already—tentative discussions had already commenced looking to a further program.

I remember that Mr. Keehn said that he thought that the additional program added up to about $100-million. The next day he called me up and said, "I'm sorry I was wrong. I have checked on that, and it's nearer $150 million."

Q. I understand you to say that you had come to the conclusion that at that time, that is, in late February or March, you were concerned as to whether TWA was short on its jet fleet, is that correct?

A. That's right.

Q. And that that subject had come up for discussion at this February 28th meeting at the Ritz Tower?

[fol. 5579] A. Yes, I think it was touched on rather lightly there.

Q. What was the basis of the information you had to come to the conclusion that TWA was short in its jet fleet? Who told you that?

A. Well, it came from three sources. One, the Civil Aeronautics Board order, which suggested as much. Secondly, from the Fortune article to which I referred, and third, from a little research I had done myself on the relative equipment situation of Pan Am, TWA and American.

Q. You mean you had done some research on the equipment situation of TWA before you had decided to take the job?

A. During this interim period, yes.

Q. I am referring now to February 28, 1961.

A. Before February 28th?

Q. Yes.

A. I think so, yes.

Q. Will you tell me what the nature of that research was?

A. I think I looked in Aviation Week, or one of those magazines. I think it was probably Aviation Week. They put out a statistical issue every once in a while, and the [fol. 5580] number of aircraft on order, and this, that and the other thing. I may have talked to Arthur Raabe, who was vice-president in charge of commercial aviation sales, and who was in the same office I was at 30 Rockefeller Plaza.

Q. At Bendix?

A. Yes.

Q. Will you tell me now what facts you found in Aviation Week that Mr. Raabe told you, which permitted you to conclude that the TWA jet fleet was inadequate?

A. Merely figures on ships in hand and on order.

Q. As compared to what?

A. The number of ships that American had on hand or on order. The number of ships that United had in hand or on order, and the number TWA had in hand or on order.

Q. Do you recall just when and where you made that research?

A. I think I made it at my desk, at 30 Rockefeller Plaza.

Q. And this is what you did before you made up your mind as to whether or not you were in fact interested in becoming the president of TWA?

A. This is one thing I did, yes.

[fol. 5581] Q. And then you say you relied also on what the Fortune article had to say about it?

A. Yes, there is a statement in there, I believe, to this effect.

Q. That was something which was handed to you at the February 28th meeting at the hotel, isn't that right?

A. The Fortune article?

Q. Yes.

A. Yes.

Q. And, therefore, at that time, by glancing at the article that was handed to you, at that time you felt that you were

in a position of concluding that was a serious problem at TWA?

A. I didn't say at that time I concluded it was a serious problem, Mr. Davis. I said I thought it was touched on at that time.

Q. But it concerned you to such an extent, that subsequently you felt it was necessary to have a meeting with Mr. Hagerty of the Metropolitan, to assure yourself of adequate funds for a further expansion of the jet fleet?

A. I thought it would be desirable.

Q. And you had a meeting on March 6th for that pur-
[fol. 5582] pose?

A. So far as I was concerned.

Q. And that was based on the information that you had been able to gather in your research while you were contemplating taking the job as president of TWA, but you had not yet made up your mind to take the job?

A. That's correct.

Q. Do you recall the issue of Aviation Week that you found or studied to arrive at this conclusion?

A. No, I don't, Mr. Davis. You could very well check on the statistical copies of Aviation Week. I also think, if I recall correctly, that Mr. Raabe had circulated shortly before that—I might be wrong about this—a forecast of fleets by different carriers.

Q. And you felt that Mr. Raabe's study was reliable enough for you to become concerned as to the size of the TWA fleet?

A. I had no question about its reliability.

Q. Would you identify Mr. Raabe's duties and functions at Bendix?

A. Yes. He is in charge of commercial aircraft sales. He is a staff vice-president whose job is that of co-ordinating commercial aviation sales, including, among other things, sales of products to airlines.

[fol. 5583] Q. Will you identify when it was that you had this discussion with Mr. Raabe on this subject?

A. It would have been in the latter part of February, maybe the first week in March. I can't be exact about that.

Q. Do you recall what you said to him and what he said to you, of any significance?

A. The only thing I remember was I was out in Detroit with him riding in a car from downtown to the airport, and kept asking him questions about TWA.

He said, "Why are you so interested in TWA?"

I said, "I am just interested."

Q. Mr. Tillinghast, let me see if I can refresh your recollection a little in connection with that meeting on February 28th that you had with Mr. Breech, Mr. Reed and Mr. Brown.

Isn't it a fact that one of the ways they raeassured you that control would be maintained over TWA was because of a plan which they identified to you for acquiring additional jets at some financing of $100 million or $150 million, and in connection with that it would be impossible for the Hughes Tool Company to refinance both what had taken place in 1960, and what they contemplated doing.

[fol. 5584] Mr. Sonnett: Would you read that back?

(The question was read.)

A. No, it does not.

By Mr. Davis:

Q. It does not refresh your recollection?

A. It does not refresh my recollection, and it is not the fact.

Q. Since the subject of a jet shortage at TWA was discussed at that meeting, will you now tell us what was said in that connection by you, Mr. Breech, or Mr. Reed or Mr. Brown?

A. The only thing I can recall, Mr. Davis, is that I raised the question of the financial condition of TWA and its ability to proceed further to acquire jet aircraft. The answer I was given was that they were quite confident that if the company had a president and a stable management, that the financial institutions would give their support to a futher equipment program.

Q. Didn't they go further than that and tell you that tentative discussions had already commenced with these financing institutions?

A. I don't think so. I think the first time I heard that was in Mr. Hagerty's office, Mr. Davis.

Q. Will you describe for me what was said or what took [fol. 5585] place following that meeting of February 28th which caused you to become concerned as to the desirability of meeting with these financing institutions, or some of their representatives?

A. I would say substantially nothing happened during that meting, Mr. Davis. My concern arose from the CAB order, and the discussion in that, from the Fortune article, and from what I think I knew at that time—but I wouldn't be positive about this—from what I refer to as my statistical investigation—that the total number of jets that TWA had and had on order was very substantially less, smaller than the number which either United or American had.

Q. You are referring to the statistical investigation you made between February 20th or 21st, and February 28th, isn't that right?

A. If it was made then. But I am saying I am not positive as to exactly when I did that. I think it was probably in that period, but I wouldn't be absolutely positive.

Q. Isn't it correct that February 20th or February 21st was the first time Mr. Reed called you?

A. That's right.

Q. And that was the first time you acquired any interest [fol. 5586] in TWA, isn't it?

A. That's right.

Q. It couldn't have taken place before that date?

A. That's right.

Q. By February 28th, in that hotel room, you had this concern, isn't that right?

A. That's correct. Whether or not it was a major concern at that time, I can't say. I can only say that I recognized it as a problem. I might say the preceding week end at home I had done some homework on the subject.

Q. I appreciate that. I am trying to establish, Mr. Tillinghast, that this research, or this statistical survey, whatever you did, had to have taken place between February 20th and February 28th?

A. Not at all.

Q. Now, you explain to me when else you think you did it.

A. It might have been after February 28th. I am quite sure it was before I talked with Mr. Hagerty and the others in Mr. Hagerty's office.

Q. On March 6th?

A. On March 6th. Exactly when it was, I just couldn't say at this point.

Q. So now you are not quite certain as to whether or not [fol. 5587] on February 28th you had any concern about the adequacy or the size of the TWA jet fleet?

A. Mr. Davis, I have testified that I recognized it as a problem at that time. How seriously concerned with it, how far I had gotten into it, I can't say at this point.

Q. I am trying to determine how you recognized it as a problem. What facts came to your attention that made it appear as a problem at all?

A. The first thing that came to my attention was the Civil Aeronautics Board order.

Mr. Davis: May I have this marked for identification, please, as Defendants' Exhibit 2.

(Civil Aeronautics Board, order, marked Defendants' Exhibit 2 for identification, as of this date.)

[fol. 5588] Q. Let me hand you Defendants' Exhibit 2 for identification, which is a CAB order, in Docket 1182, and Docket 2796, and ask you if that is the CAB order to which you have been referring in your testimony.

A. Yes, it is.

Q. Will you point out in there the portion of that CAB order which came to your attention when Mr. Reed handed it to you at the luncheon on February 24th, which caused you to recognize a problem as to the adequacy of the then existing jet fleet of TWA?

A. I didn't say that it came to my attention when he handed it to me at lunch.

Q. My recollection is—you correct it if I am wrong—that it was at that luncheon that Mr. Reed handed you that CAB order and the voting trust agreement?

A. That's correct.

Q. I understand your further testimony to be that you did some homework that weekend?

A. That's correct.

Q. Namely, on the weekend of February 25th through the 26th?

A. Yes.

Q. And that as a result of studying that CAB order, and the voting trust agreement, you came to the conclusion that [fol. 5589] there was a serious problem, or some problem, is that correct?

A. I think that's correct.

Q. I am asking you now to identify for me the portions of tht CAB order which made you recognize the problem.

A. One thing, Mr. Davis, on page 5, where there is a discussion of the fact that TWA's major competitors arranged their financing at a significant earlier date than did TWA, and then in the next paragraph it discusses the effect this had in preventing TWA from securing delivery of a substantially large portion of the jet fleet.

Then it goes on to say that we note that traffic—that the carriers preliminary traffic reports for the month of November show the TWA share of the domestic market has declined from 23 to 20 per cent, and so forth.

It appears to be significant that TWA's major competitors have already taken delivery of much larger fleets than TWA is operating, and have firm orders for the delivery of more. I am sure that is one of the things that raised the question.

Q. Let us address ourselves to that for the moment, [fol. 5590] and then I will give you an opportunity to look for some indications. That refers to the alleged delay that occurs in the delivery of a jet fleet to TWA, isn't that right?

A. Among other things, yes.

Q. And also refers to the cost imposed upon TWA by reason of the financing which was before them for approval, isn't that right?

A. Yes.

Q. Is there anything in those two paragraphs which you can identify as indicating that the jet fleet delivered to TWA or on order by TWA to be received would result in an inadequate jet fleet so as to cause you to be concerned as to the problem of the size of the jet fleet?

A. Well, all I can refer to, Mr. Davis, is the last sentence which I read, which I think speaks for itself.

Q. That other airlines had firm orders for deliveries of more jets?

A. That they have already taken delivery of much larger jet fleets than TWA is operating and have firm orders for delivery of more.

Q. We are talking about the problem of ordering more. We weren't talking about the problem of how many jets would be delivered in due course as a result of the 1960 [fol. 5591] financing, are we?

A. We are talking about what this may suggest as to the number of ships that TWA had on order, on hand or on order, as compared with others.

Q. What information had you had as to how many jets TWA had on order at that time?

A. That is a little hard to reconstruct in my mind. I knew, I believe, that they had 27 jets, plus such of the Convairs as had been received at that time.

Q. Are you finished with your answer?

A. At the bottom of page 4 "TWA has arranged for the acquisition of 47 jet aircraft. Comparable carriers have acquired or are in the process of acquiring jet fleets in the neighborhood of twice this size."

Q. And that disturbed you?

A. It certainly raised a question in my mind.

Q. And that was a question which was raised in your mind during the course of the weekend of February 25th and 26th?

A. I presume that was raised in my mind when I read that order, which was that weekend.

Q. And then you had a meeting with Mr. Breech and the others on February 28th?

A. That's right.

[fol. 5592] Q. Between the 26th and the 28th did you make any statistical study or research or inquiries of anyone as to what the actual needs of TWA might be or should be?

A. No, I didn't make any inquiry of anyone as to what the needs were. It is a little hard to remember details like this at this distance, but I think what I did was look at the

gross revenues of TWA in comparison with those of American and United, and applied that percentage to the jet fleet, and came to the conclusion that TWA's was relative to the size of the business underequipped jet-wise compared with the other two.

Q. Isn't it a fact that it was on the 28th, at that meeting with Mr. Breech, and the gentlemen there present, that Mr. Breech stated that the plans of TWA were to acquire more jets?

A. I don't believe that was the case, Mr. Davis.

Q. It is your testimony that as a result of the study that you had independently made, and without discussing it with anyone else, at that meeting of the 28th you were aware of the needs or felt that there was a problem that TWA was confronted with with respect to the size of its jet fleet, as you testified today?

A. I believe that is the case, yes, sir.

Q. And you have no recollection whatever of Mr. Breech [fol. 5598] and those there present indicating to you the extent to which TWA was going to borrow vast sums of money, all of which would be conditioned upon a continuation of control by the so-called independent group then in control?

A. I am quite sure that was not discussed, Mr. Davis.

Q. But you were told that there had been tentative discussions with lending institutions?

A. No, I was not told that. I was told merely that lending institutions would give TWA further financial support if TWA got a president and they were satisfied it had a stable management.

Q. At that time you had not made up your own mind as to whether you wanted the job?

A. That is correct.

[fol. 5594] Q. And you gave no indication to Mr. Breech, Mr. Brown or to Mr. Reed as to what your intentions were?

A. I think that's correct.

Q. You certainly didn't say anything to them to encourage them in believing that you were interested?

A. Other than the fact I was discussing the fact.

Q. As I recall you testified, they indicated to you you would have a couple of weeks in which to make up your mind?

A. They wanted me to make it up as soon as possible, and, as I recall, they hoped I could do it in a couple of weeks.

Q. At that time did they suggest to you that in order to get the job you would have to be interviewed by certain lending institutions or certain individuals at certain institutions?

A. No, they did not.

Q. That was not mentioned?

A. That was not mentioned.

Q. Did they indicate that the lending institutions were not interested as to who might be the next chief executive of TWA?

[fol. 5595] A. They didn't indicate anything one way or the other.

Q. And it was your suggestion that Mr. Reed make arrangements for you to meet with Mr. Hagarty?

A. No, it was Mr. Reed's suggestion.

Q. It was Mr. Reed's suggestion to you?

A. To me.

Q. Explain to me just how he came to make that suggestion.

A. I am quite sure I had a further conversation with Mr. Reed by telephone after this, and I said that I was quite concerned about this equipment problem, and the general financial problems of TWA.

He said that he thought the best way to find out as to what sort of support I might get from the financial institutions was go and ask the financial institutions themselves.

Q. Excuse me for interrupting you.

Will you please identify this meeting or conference with Mr. Reed? When did it take place?

A. Well, it was some time after the 28th and before the 6th.

Q. Let me refer you to your pad, Defendants' Exhibit 1. I believe your prior testimony was that you might have

[fol. 5596] had one or two telephone conversations with Mr. Reed.

Mr. Sonnett: That is incorrect.

Mr. Davis: Let me get the right facts.

Mr. Sonnett: You have been through this subject twice, and he has replied to the same thing twice, and apparently you didn't hear it the first time.

Mr. Davis: That may be, and if I didn't, I am sorry.

By Mr. Davis:

Q. Now will you tell me, Mr. Tillinghast, what took place after February 28th and before March 6th?

A. Well, I had in that period a couple of telephone calls, as I recall it, with Mr. Reed, during one of which we had this conversation to which I have just referred.

Q. What general financial problem did you have in mind that you were discussing with Mr. Reed?

A. Well, the problem I knew from, let us say, hearsay and general impressions.

Q. Hearsay from whom?

A. I haven't the slightest idea from whom. It was over the years—that TWA had a great many financial problems. [fol. 5597] I read it in the newspapers. One of the things that I was interested in was the general financial soundness and what TWA would do for money if they needed additional money. This is one of the things that I talked with Mr. Reed about.

I repeat that Mr. Reed suggested that the best way to do it was to talk with the financial institutions, and he said, "I think if you go in, having expressed your views and your concern on this subject, that in effect you have a moral obligation to—they have a moral obligation to support you."

Q. And then he suggested a meeting with Mr. Hagarty?

A. That's correct.

Q. And that was the meeting arranged for March 6th?

A. March 6th.

Q. Are you suggesting that you and Mr. Reed arranged to go to Mr. Hagarty's office to discuss the financial prob-

lems of TWA before you made up your mind as to whether you were going to take the job?

A. Yes.

Q. And you in fact discussed the details of the financial problems of TWA before indicating to anyone you were prepared to take the job?

[fol. 5598] A. I didn't discuss them in detail, Mr. Davis.

Q. What was the purpose of the visit to Mr. Hagarty's office?

A. I have already explained it several times, Mr. Davis.

Q. Prior to that time you had not indicated to anyone that you had made up your mind as to whether or not you would take the job?

A. That is quite correct.

Q. And in truth and in fact you had not made up your mind?

A. That's correct.

Q. You were undecided as to whether you would take the job?

A. That's correct.

(Whereupon, a five-minute recess was taken.)

By Mr. Davis:

Q. By the way, up to that point had there been any discussion with you as to what the employment contracts were of other chief executives of other airlines?

A. Up to what point?

Q. To the point we are at, which is February 28th or March 6th—either one.

[fol. 5599] A. No.

Q. In connection with this study that you made relating to TWA you did not inquire or go into the question as to what was the compensation of the chief executives of airlines?

A. Yes, I did go into that, Mr. Davis, in Aviation Week, which periodically reports the compensation of a whole slew of executives of airlines, and I did some reference work in that.

Q. When was that?

A. I can't tell you exactly when that was. That might have been anywhere between the 24th of February and the 12th of March, I would guess. It was along in that area somewhere. It just so happened, as I recall it, that Aviation Week at that point was publishing the salaries for the year 1960.

Q. And did you find reference to any contract comparable to what you have described as the Breech contract at Ford?

A. No, I did not.

Q. I believe you said the next event which took place was a meeting at Mr. Hagarty's office.

A. On the 6th of March.

Q. And that is reflected on Defendants' Exhibit 1, is [fol. 5600] it not?

A. Yes.

Q. At 3:00 p.m. in the afternoon?

A. At 3:00 p.m. in the afternoon.

Q. And that is when it was held?

A. That is when it was held.

Q. Your records do not disclose an entry with respect to the meeting of February 28th that we have been talking about, do they?

A. That's correct, they do not.

Q. And you have no written records of any kind of what took place at that meeting or who was present at that meeting?

A. That's correct.

Q. And your records do not show any meeting with anyone else representing TWA, or any of these lending institutions, until the 6th of March; isn't that right?

A. Well, the calendar speaks for itself.

Q. I understand that, but am I interpreting it correctly?

A. I see none.

Q. In fact, there were none, were there?

A. I don't believe so. I am just not sure whether or [fol. 5601] not I may have actually seen Mr. Reed in that interim. I think I just talked with him on the telephone.

Q. Will you be in a position of producing the records kept by your secretary at our next meeting on Monday morning?

A. I presume so.

Q. Will it be possible for you to make it available to us before Monday?

A. That I don't know, because I told my secretary to take this afternoon off. I don't know where it physically is.

Q. Will you identify the persons who were present at this meeting with Mr. Hagarty?

A. I have already named them.

Q. I understand that, but for the purpose of some continuity would you mind giving it to me again?

A. Mr. Hagarty, Mr. Keehn, Mr. Jenkins, Mr. Sessel and Mr. Reed, I believe.

Q. And that was the meeting held in Mr. Hagarty's office?

A. Yes.

Q. At the Metropolitan Life Insurance Company?

A. Yes.

Q. Mr. Keehn is with the Equitable, is he not?

[fol. 5602] A. Yes.

Q. Did you know Mr. Keehn? Had you met him before that time?

A. I had met Mr. Keehn perhaps twice very casually, when he was with the First National Bank.

Q. Had you known Mr. Hagarty at all?

A. I had never met him.

Q. Mr. Jenkins, who is he with?

A. He is with the Metropolitan.

Q. Do you know what his position there is?

A. He was Mr. Hagarty's assistant. I can't give you his exact title.

Q. Had you known him before?

A. I had never seen him before.

Q. And Mr. Sessel—will you identify him?

A. Mr. Sessel is the vice-president of the Irving Trust Company and a director of TWA.

Q. You had known him before this day?

A. No. I think that was the first time I ever laid eyes on Mr. Sessel.

Q. And Mr. Reed—

A. Was my former partner.

Q. Do you know who undertook to bring about this meeting to invite these various gentlemen to attend?

[fol. 5603] A. So far as I know, Mr. Reed did.

Q. It is your understanding that he called each one of these gentlemen to arrange for that meeting? Is that your understanding?

A. All I know is that he told me that he had arranged for me to meet them at that time. Who did the telephoning I just don't know.

Q. Will you describe now what took place at that meeting?

A. Well, we sat around at the beginning and had some pleasantries.

Q. How were you introduced?

A. As Mr. Tillinghast.

[fol. 5604] Q. Was anything else said?

A. Not that I recall.

Q. They were supposed to know why you were there?

A. I presume they didn't think I was a stranger just walking in off the street.

Q. Give me what your understanding was. After all you walked in to meet gentlemen you had never seen before?

A. I walked in with Mr. Reed and he introduced me to the other gentlemen.

Q. As someone interested in becoming president of TWA?

A. No. He just introduced me to them. They didn't seem surprised that I was there.

Q. Was it your understanding that the purpose of this meeting was to look you over, so to speak?

A. I suspected that was one of the purposes of it, yes.

Q. Wasn't that the primary purpose of the meeting?

A. I don't know, Mr. Davis. I know what I was interested in.

Q. What had Mr. Reed told you was the purpose of the meeting?

A. I have already testified to that several times.

[fol. 5605] Q. I don't want you to repeat the testimony as to the concern you had over the size of the jet fleet—I am just asking you whether Mr. Reed said anything else to you with respect to the purpose of the meeting, and why you ought to attend the meeting, and who was going to be there? Did he tell you anything about that before the meeting?

A. I have already testified to a good deal of it, and I don't recall anything over and above what I have already testified to, except that I think he said that Messrs. Keehn, Hagarty and Sessel would be there.

Q. Did he indicate why they were going to be there, their position of influence, or their duties, or their responsibilities relating to TWA?

A. No. I knew who they were.

Q. Tell me what happened when you did meet with those gentlemen?

A. Well, we sat around. As I say we started with various pleasantries, and they asked me some questions about what I had done, and this, that and the other thing. Before we got into that, they talked a little bit about the difficulties that they had had in the closing days of 1960, and how Mr. Bautzer had suddenly gotten sick, and disappeared in the hospital.

[fol. 5606] Then they asked me about what I had done, and made a certain amount of conversation. I eventually got to the point where I said that there was one thing that was concerning me, and that was where TWA, which seemed to be obviously going to have a further equipment problem, could look for money. That was when I learned that there had already been some discussions. As I mentioned before, with suitable banker reservations, that they obviously could not make any commitments, but they had had some preliminary discussions with TWA about a further equipment program, and it seemed to them broadly realistic, and once they felt that TWA had a president and a stable management, they would be prepared to move ahead and discuss the program seriously.

Q. Is that the substance of it?

A. Yes, that is the substance of it. As I mentioned before, Mr. Keehn mentioned $100 million. I believe there was also

some discussion at that time that at some point TWA was going to have to get some more equity in the situation. I remember we discussed the debt burden of TWA, and how it looked vis-a-vis other carriers, if you treated the subordinated debentures as equity on the one hand, and if you [fol. 5607] treated them as debts on the other. They opined as how treating them as equity rather than debt, that TWA's financial structure seemed to them just as good as that of the other major airlines at the time, but that if it went on—if TWA went on with further equipment programs, it was obviously going to be a question of further equity.

Q. In connection with that meeting, was there any discussion between you and Mr. Reed, or have you ever heard any one say that it would be undesirable for either Mr. Breech or Mr. Olds to attend that meeting?

A. No, I never heard any such discussion.

Q. So far as you know, the absence of Mr. Breech and Mr. Olds at that meeting was not pursuant to advice or deliberate decision.

A. If I recall correctly, Mr. Breech was out in Phoenix at the time, and I don't know where Mr. Olds was. I guess Mr. Olds must have been around somewhere, because I met him the next day.

Q. How long was that meeting at Mr. Hagarty's office?

A. I would guess roughly an hour, maybe a little less.

Q. Did all these people stay there during that entire time? [fol. 5608] A. Yes. I would not promise that Jenkins was there the whole time, but broadly, yes.

Q. I gather that there came a time when you said in effect to those gentlemen there present that you were concerned as to where TWA was going to find the money for its obvious need for additional equipment?

A. I just testified to that, Mr. Davis.

Q. Did any of those gentlemen express some concern as to your conclusions that TWA obviously needed additional equipment?

A. No. I took it that they accepted that as a fact.

Q. They didn't ask you what was the basis for your conclusion to that effect?

A. No.

Q. Did they talk as though they had already reached that conclusion themselves?

A. Yes, I would say that they seemed to be completely in agreement with that conclusion.

Q. Do you recall anything said by anyone there which confirmed that feeling or conclusion on your part?

A. No, I don't remember anything specific. It seemed to me at that time so obvious, that it wasn't a subject I was [fol. 5609] interested in laboring.

Q. You thought that was pretty obvious?

A. I did think that is pretty obvious.

Q. Do you recall anything in particular that Mr. Hagarty said, of some significance?

A. No, I don't remember anything of great significance that he said. As I recall it, he was fairly silent except for the very beginning when he was sort of recounting in sort of a casual way that we certainly had our problems last fall. It is good to have them behind us—or something to that effect.

Q. Did you have occasion to refer to the Fortune article that you had recently read?

A. Yes, sir. As a matter of fact, I think I may be wrong about this—I think Mr. Hagarty said that was a damned good article, and quite accurate, much more so than most articles in periodicals. Maybe somebody else said it, but I think it was Hagarty who said it.

Q. Who of those present, other than yourself, seemed to take the lead in doing most of the talking or the asking of questions?

A. Well, I would say, as I recall it, that Grant Keehn, particularly when it came to TWA's financial structure and equipment need, and so forth, I would say that he did most [fol. 5610] of the talking.

Q. Did you have occasion of saying "Gentlemen, my interest in being here today is primarily for the purpose of" something or other?

A. I don't think so, not that way.

Q. You assumed that they knew why you were there?

A. I assumed they knew why I was there, yes.

Q. And you were there, so far as you were concerned, primarily to satisfy yourself as to where or how TWA could finance the additional jet equipment which you had concluded was obviously needed by them?

A. That's correct.

Q. Will you tell me just what you said, what questions you asked, and what replies you received on the subject?

A. Well, I think I have already covered it, Mr. Davis, several times. Basically what I said was there was one problem that concerned me very much, and that was the problem of TWA's obvious need for further jet aircraft, and how it was going to pay for it.

Q. Did you also indicate that you were concerned as to where TWA could go to finance itself?

A. I don't recall discussing the where part. I discussed [fol. 5611] just the general problem.

Q. I am trying to get you to identify for me what was the nature of the general problem.

A. Mr. Davis, I am afraid I can't say anything more on that than I have already said.

Q. I am asking you to search your recollection as to what was said. I refer you to your testimony to the effect that there was some indication that the capital structure was not too bad under certain assumptions. You were there for a purpose of satisfying yourself. Did you satisfy yourself that TWA could obtain the necessary financing for additional jet equipment it obviously needed?

A. I was satisfied that so far as one can obtain bankers' assurances under those circumstances, that I had them.

[fol. 5612] Q. Can you explain to me or describe what was said, and by whom, that gave you that feeling of assurance?

A. I have already testified to that.

Mr. Sonnett: He said that three times.

Mr. Davis: I am persisting in my inquiry because I am not satisfied with the answers.

Mr. Sonnett: I am not satisfied with the question. You are repeating the question three or four times.

Mr. Davis: Because I am not satisfied with the prior answers I have had. We will save more time if the witness will make an effort to answer my questions even if I am awkward in asking them.

Mr. Sonnett: I don't mind his answering questions twice, but the third and fourth time it gets to be boring.

Mr. Davis: Perhaps the record won't be so boring to others.

A. I can't say anything more on the subject than I have already said.

By Mr. Davis:

Q. Are you now testifying that what you have said was [fol. 5613] all that took place, which was necessary to satisfy you, that TWA would be able to finance its obvious needs for additional jet equipment.

Mr. Sonnett: Will you read that back to me?

(The question was read.)

A. Obviously, Mr. Davis, what I have said is not all that was said. It's my recollection, my summarization of what was said. I can't recall at this point exactly the words that were said in a conversation that went on for three-quarters of an hour or an hour.

By Mr. Davis:

Q. Did you make any inquiry as to whether it would be possible to go to other lending institutions if these did not happen to be satisfied with the management?

A. No, I made no such inquiry.

Q. Either of them or of anyone else?

A. At any time?

Q. In that period of time.

A. In that period of time, no, I did not.

Q. How did the meeting break up? How was it left?

A. It was left, as I have already stated—as I recall it, [fol. 5614] somebody got up and said he was sorry, but he had another date, and we broke up and went home.

Q. Did you make any notes of that meeting?

A. No, I did not.

Q. Did anyone else at that meeting make any notes of that meeting?

A. That I don't know, Mr. Davis.

Q. Have you heard of anyone making notes of that meeting?

A. Not to my knowledge, but maybe everyone else made notes.

Q. Subsequent to that meeting, have you had occasion of discussing with any one of those gentlemen what, in fact, took place at that meeting?

A. No, I have not.

Q. Have you seen any summary prepared by someone else, or notes of anyone else, as to what took place at that meeting?

A. No, I have not.

Q. When someone said that they had to go, and the meeting broke up, did you say anything indicating that you had been satisfied for your purposes?

A. No, I did not.

Q. Did you indicate that you expected to see them again?

[fol. 5615] A. No, I don't think I did.

Q. Would you please describe for the record just how the meeting closed?

A. I can't remember exactly, other than I have a sort of vague recollection that somebody had to go somewhere else, and it may even have been Mr. Hagarty that had some other date. But as I recall it, somebody's necessity for going somewhere else is what brought the meeting to an end.

We all said good-by, it's nice to meet you, and that was that.

Q. Did any of those gentlemen go out with you somewhere else? Did you go home alone? Did you leave everybody behind?

A. I think I went back to 30 Rockefeller Plaza, and the others all went in another direction.

Q. I believe you said the next day Mr. Keehn called you?

A. He did.

Q. And that was to correct a statement he had made at that meeting?

A. That's correct.

Q. And he called you at your offices at Bendix?

[fol. 5616] A. Yes.

Q. Will you describe what was said in that telephone conference?

A. He merely said that when he had mentioned the amount involved in the futher equipment program, he had

been a little—I am not sure he said off-base—but in effect that is what he said, and that since getting back he had checked up on it, and that it was substantially larger. It was roughly a $150 million package.

Q. Did he describe to you at that time or at the meeting what any of the terms or conditions of this contemplated possible financing might be?

A. No, we didn't discuss that at all.

Q. What part did Mr. Sessel play at that meeting?

A. My recollection is, Mr. Davis, that Mr. Sessel played a somewhat passive role. I can't offhand think of anything specific that he said, although I am sure he said a variety of things.

Q. But none of them of any significance or importance which you can recall?

A. None that I recall now.

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[fol. 6056] By Mr. Davis:

Q. What are the facts, anyway, Mr. Tillinghast?

A. The facts are these, Mr. Davis, if that is what you want: The recommendation by the TWA operating people had already been reached before I came with the company. Obviously this was a matter of such great significance and importance that I wanted to review this recommendation, this conclusion that had already been reached, so prior to coming with the company I talked with Mr. Rummel, I read the equipment proposal, and the first day that I was there I had a meeting in the afternoon for the purpose of having a broader discussion of this to see myself as to whether I was [fol. 6057] prepared to adopt this program and recommend it to the board at its meeting ten days later.

Q. If I understand your testimony, the operating people had already made up their own mind and made a recommendation before you became chief executive officer?

A. That's correct.

Q. Then you felt that you as chief executive officer ought to review it?

A. That's correct.

Q. As a result of the review that you made of it you subsequently recommended it to the board on April 27th?

A. Yes.

Q. What you recommended to the board on April 27th was, in substance, the recommendation of this operating personnel group, is that correct?

A. Yes.

Q. So what was recommended to the board on April 27th was, in effect, the conclusion reached by the operating people of TWA before you became chief executive?

A. That's correct.

Q. Do you know whether or not that was a program or [fol. 6058] conclusion that was prepared by the operating people at TWA at the direction—at whose direction was that program or study made prior to your becoming chief executive officer, do you know?

A. Well, I can't be altogether positive about that. I believe that Mr. Rummel's department generated the study on its own, and that that study was brought by Mr. Rummel's department to a point where some action was required, and at a meeting of the board prior to the time that I took office there had been an equipment committee appointed specifically to deal with this problem.

Q. May I interrupt you by asking you to identify this equipment committee, because up to this point I was thinking everything was being done by this operating committee or operating personnel under Rummel.

A. Well, I can't remember—I can refresh my recollection, but at the moment the only people I can be sure of on that committee were Mr. Leslie, Mr. Cocke—

Q. All operating people?

A. Mr. Pierson, I believe, and I believe there were one or two others, but I can't remember for sure at the moment.

[fol. 6059] Q. All operating personnel, in a broad sense?

A. I wouldn't guarantee that.

Q. Mr. Sessel?

A. There may have been an outside director on the committee. I just can't recall at this point.

Q. Mr. Sessel, perhaps?

A. I doubt—

Q. Mr. Breech?

A. No, I am sure Mr. Breech wasn't on that committee.

Q. When you were reviewing these recommendations did anyone of any importance or significance, or whose views would be material—

A. My recollection is that it consisted mainly of the inside directors.

Q. Inside directors or inside employees?

A. Inside directors; Mr. Leslie, Mr. Cocke, Mr. Hall. But there may have been one or two outside directors on it. I would have to refresh my recollection to be sure, Mr. Davis.

Q. So this was an equipment program which had been generated by this personnel at TWA at a time when TWA was without a voting trust—is that your understanding of the facts?

[fol. 6060] A. No. I think it started before there was a voting trust, and ended after there was a voting trust, because the study itself was dated in March. I think maybe March 10th was the date of the study, and it is obviously the sort of study that had taken quite a time to prepare, and I believe, although I can't state positively, that it was commenced sometime in the latter part of 1960, and reached fruition in the early part of 1961.

Q. But so far as you know, the new management group or the new people in control of TWA had not impinged upon the study, they hadn't influenced it in any way, had they?

A. The new management people, you say?

[fol. 6061] Q. Yes, the new person who had acquired control of TWA.

A. Well, there weren't any new people in management, Mr. Davis, until I came in.

Q. What I am trying to say, Mr. Tillinghast, is the people who acquired control of TWA as a result of the voting trust did not exercise any influence or direction which is reflected by this study or report?

A. To my knowledge, Mr. Davis, neither the voting trustees nor the new directors stimulated, generated or directed the preparation of this study.

Q. You, some time shortly after March 30th, discussed this report with Mr. Rummel?

A. The first time was on March 30th, I believe.

Q. At that time the report was fairly well completed, but you wanted to review it before submitting it to the board; is that correct?

A. At that time the report was completed.

Q. That report contained an evaluation of the 990s?

A. It did.

Q. Did it also contain a comparison between the 990 and what Boeing had to offer?

A. It did.

Q. Am I to understand that it concluded that the Boeing [fol. 6062] was more desirable?

A. It did.

Q. You had occasion of discussing with Mr. Rummel the nature and extent to which 990s might be available to TWA if the decision in fact was to take 990s?

A. Yes.

Q. Can you describe to me a little what was said at that time between you and Mr. Rummel or with respect to the availability or lack of availability or probable availability of the 990s?

A. What I was told, Mr. Davis, and I can't tie this to a specific discussion, but what I was told was that Hughes Tool Company had some 990s on order, that they possibly would be available, that whether or not they would be available, and if so on what terms, wasn't definitely known.

However, Hughes Tool had some delivery positions which would be attractive if one were going to acquire 990s.

The 990s were in American Airlines' cockpit configuration, and if the 990s were purchased there would be a problem of delay in delivery and a problem of expense in converting the American cockpit—American Airlines' cockpit [fol. 6063] configuration to a TWA cockpit configuration, and in that connection Mr. Rummel said that he had several times tried to discuss this question with Mr. Hughes because it seemed clear to him that if these planes were intended for TWA, and if TWA were going to take them over, it was important, had been important for a long time, that they be constructed with TWA cockpits and TWA systems rather than with American Airlines' cockpits and systems, but that he had never been able to discuss the matter with Mr. Hughes, and he understood, he had been told by Con-

vair, that Mr. Hughes had given directions that Convair were not to discuss the 990s with him or any of the TWA people.

Q. Is that the full extent of your recollection as to what you discussed with Mr. Rummel relating to the 990s?

A. No, not relating to the 990s. We discussed far more than this relating to the 990s, but I thought your question was directed to the availability of the 990s.

Q. That is what I had in mind.

A. Well, as to the availability of the 990s, this is the substance of—well, I need to add one other thing, that Mr. [fol. 6064] Rummel expressed the hope that we would not get into a 990 negotiation because he felt that if we did it would be typically long, involved and drawn out, and he felt very deeply that TWA needed planes just as quickly as it could get them, and he was afraid that the whole equipment program would be delayed if we got into extensive negotiations on the 990s.

Q. Did he indicate at that time that for the terms and conditions under which the planes were available they would be or could be advantageously used by TWA, assuming that the terms and conditions were not a problem?

A. Mr. Rummel's view throughout was that if we were going to get any planes they ought to be Boeings, and that if we were going to get more planes we ought to get more Boeings so as to have a more homogeneous fleet.

Q. In other words, it was Mr. Rummel's position that it was undesirable from TWA's point of view to consider 990s, irrespective of any question of terms or conditions or delivery schedules?

A. Not entirely, Mr. Davis. I am sure that Mr. Rummel believed, felt—I had this discussion with him at a later [fol. 6065] time—that there obviously were terms good enough that TWA should be interested in 990s, but they would have involved, as I recall the figure, knowing a million dollars or more off what he assumed computed would be the probable price.

Q. You say you had a discussion with Mr. Rummel at a later time.

Are you still referring to the period from March 30th to April 27th?

A. No, I am not. I am referring to a period in July.

Q. After this litigation started?

A. That's right.

Q. I am interested now in what took place during the period we are talking about.

A. Yes.

Q. Did you have any further conferences or discussions with Mr. Rummel between March 30th and April 17th that is of any consequence, relating to this subject?

A. Yes.

Q. May I call to your attention that your calendar appears to refer to a date on April 21st with Mr. Rummel, but that is the only one, I believe, that we have been able to find.

[fol. 6066] A. Well, I have the feeling, Mr. Davis, and I may be wrong here, that I had two meetings with Mr. Rummel before I took office.

Q. Before you took office?

A. That's right. I know that I had a meeting with Mr. Rummel and Mr. Fellows, and that may have been this meeting on the 30th or it may have been a meeting the following week that we agreed upon when we met on this date.

I know that when I had the meeting with Mr. Rummel and Mr. Fellows that Mr. Fellows was there to discuss the traffic problem, and at the meeting of which I am speaking, at which Mr. Fellows was present, I had already made a quick review of this document, the equipment program I spoke about, and I was—wanted to have Mr. Fellows there because I understood that he was the man who could best answer the question of if we have all these planes, can we fill them sufficiently with passengers so that we will earn revenue with them, and I wouldn't be positive, but I have the feeling that I had one preliminary meeting with Mr. Rummel and then a meeting with Mr. Rummel and Mr. Fellows before the 17th of April.

[fol. 6067] Q. Do you recall anything that was said by you or by Mr. Rummel at the subsequent meetings which relate to the availability of the 990s, the desirability of the 990s?

A. Well, I haven't discussed yet the desirability of the 990s.

I have told you, Mr. Davis, about all that I can recall about the availability of the 990s. I haven't testified about the desirability of the 990s.

Q. Did you discuss the desirability? For the purpose of shortening the record, I am not interested, on the desirability, any more than the report shows, by Mr. Rummel, unless you discussed whether or not there should be a change in the report.

Did you discuss any possible change in his report as to desirability of the 990s?

A. No. As a matter of fact, intensive discussions as to the desirability of the 990s didn't arise until some time after the 17th of May, when the co oversy with Hughes Tool Company arose.

Q. There had been little or no discussion as to the desirability of the 990s prior to that time?

A. There had been some discussion, but it wasn't intensive discussion.

[fol. 6068] As I recall it, Mr. Rummel discussed with me why it was that he preferred the Boeing 707 to any of the other ships, and we briefly discussed each of the other ships and its virtues and shortcomings, and why it was that he felt that on balance the 707 was the desirable ship for TWA to buy.

Q. Can you, as briefly as you can, summarize the recommendation that was made to the board of directors on April 27th?

A. Well, the recommendation was that TWA proceed with a program for the purchase of 26 Boeing aircraft, consisting of 20 707-131s and six 707-331s.

Q. Excuse me for interrupting, but to identify, the six Boeing 707-331s are a long-range aircraft primarily used in the international segment?

A. That's the intercontinental version.

Q. The 20 707-131s could be best described as short-range or medium-range jets?

A. Long-range, but not as long as the 331.

Q. Was that the competitor, so to speak, of the 990?

A. I believe that has greater range than the 990.

Q. The 990, in fact, is a shorter range than the 131?

[fol. 6069] A. It is a little shorter than the 131.

The 131B, and these were both fan engine, the 131B is capable of trans-Atlantic utilization, whereas I do not believe that is true of the 990.

Q. For the purpose of following your testimony, the discussion you had with Mr. Rummel of the 990s versus the Boeing is really a comparison of the 131s of Boeing versus the Convair 990?

A. That's correct. The 990 isn't comparable at all with the 331B. It is broadly comparable with the 131B.

Q. I believe I interrupted you when you were going to summarize the recommendation that was made to the board when you said it was basically to take 20 131Bs and six 331s.

A. Well, that is all I intended to say. That was the recommendation.

. . . . . .

[fol. 6098] Q. Excuse me for interrupting the train of thought, but it suddenly occurred to me that since your counsel produced these two files of documents marked Plain-
[fol. 6099] tiff's Exhibits 1 and 2, intermingling two requests of mine, let me go back for just a moment and ask you now to examine those two files and identify the documents which you previously testified constituted malicious and willful or other kind of interference by Hughes Tool Company or me or any representative of the Tool Company.

As before, I would appreciate it if you would clip the document so that it later may be marked for identification.

Mr. Sonnett: I think I will have to undertake to answer that question, Mr. Davis. It is argumentative.

It is the position of TWA that all communications by you and by Mr. Holliday in this connection were acts in furtherence of the conspiracy and other violations of law charged in the complaint.

Mr. Davis: I appreciate that, Mr. Sonnett.

My question is to the witness. You may direct the witness not to answer if you choose to.

Mr. Sonnett: I advise the witness that your question is argumentative, and therefore does not require an answer.

Q. Mr. Tillinghast, you recall testifying, do you not, that
[fol. 6100] you received and knew of communications by the Tool Company which you characterized as being unwar-

ranted interference with the affairs of TWA—do you recall your testimony in that regard?

A. I recall my testimony in that regard.

Q. Do you also recall testifying that you had reference to dozens of communications and telegrams?

A. I don't think I said dozens, Mr. Davis.

Q. Have you finished your answer?

A. Yes.

Q. Without reference to the number of documents, which I believe you did testify to at one point, let me refer you to page 472 of your testimony. Let me start you, if I may, at page 471, when there was again some discussion between counsel as to the line of that inquiry.

At the bottom of page 471 you, as a witness, said:

> "Mr. Davis, let me say I am referring to all of the letters you wrote, which were very numerous and lengthy and considerable, from the period beginning about the 15th of May and continuing through the period really up to the present."

The next question was:

> [fol. 6101] "Those are the communications which you feel constitute interference by the Tool Company in the affairs of TWA?
>
> "A. Oh, I didn't say that, Mr. Davis. I think some of the letters were appropriate, perhaps proper statements of position to management, and others were unwarranted interference in management of TWA."

The next question was:

> "Will you identify, if not by exact dates, the letters or the number of letters which you have in mind as letters which you felt constituted unwarranted interference in the affairs of TWA?"

Then, if you will recall, Mr. Tillinghast, just subsequently you felt that they were, on page 473, where your answer was:

"Well, Mr. Davis, they were so numerous that it would be difficult for me to recall all of them."

You have before you, Mr. Tillinghast, the file prepared by your counsel which purports to include all the letters and communications which your counsel, in support of the complaint, feels constitute unwarranted interference. I am [fol. 6102] asking you to identify the communications which you had in mind when you testified as you did.

Mr. Sonnett: Are you through?

[fol. 6103] Mr. Davis: I have asked a question, Mr. Sonnett.

Mr. Sonnett: You have made various references to what TWA's counsel feels or what these files are supposed to represent in the judgment of TWA's counsel, and you are quite incorrect.

They represent an effort to assemble for you, in response to a belated request, communications from you or Holliday or others acting on behalf of Hughes Tool Company to TWA, and, I think, and I am informed, that they represent all of the written communications that we have in the files.

As to their evidentiary significance, Mr. Davis, this is a matter that the Court is going to have to determine, and I don't propose to have you get into a debate with the witness as to what document proves what.

These are communications that you sent or received or Holliday sent or received. They speak for themselves The best evidence of what they say is in the documents.

I don't suppose you want to quarrel with the authenticity of these copies, or of the originals, in some cases, bearing your own signature, but it seems to me you are taking an [fol. 6104] awful lot of time in nagging at a question of let's debate what the documents prove.

If you call the witness' attention to any particular document in the series of communications, you want to ask him any questions about conferences, discussions, or whatever

he did or said in response or in connection therewith, go ahead.

By Mr. Davis:

Q. Do you understand my question, Mr. Tillinghast?

A. Yes, I understand your question.

Mr. Davis: May he answer the question, Mr. Sonnett?

Mr. Sonnett: I don't understand the question, myself.

Mr. Davis: Will you read the question back to the witness? I know there was some lapse of time since my question.

Mr. Sonnett: You see, if you put questions without oratory we would be better off. Your reference as to what TWA's counsel intended or thought or believed or how these documents were assembled, was inaccurate. So I had to correct it.

(The question was read.)

Mr. Sonnett: I object to the form of the question and [fol. 6105] advise the witness not to answer it.

Q. Mr. Tillinghast, will you identify from the material which is before you the letters or communications which you had in mind when you testified as you did at page 471 and 472 of the transcript?

A. Well—

Q. To avoid wasting time, you need not refer to communications which you described as being appropriate. I am interested solely in your identifying those documents which you felt were unwarranted interference in management of TWA.

A. Well, Mr. Davis, let me first say this, that I think this whole line of correspondence was for the purpose and intent of interfering unduly with TWA's purchase of Boeing aircraft.

But dealing specifically with those letters which affirmatively caused interference, and leaving out the routine ones—

Q. You mean routine letters of interference? I don't want you to leave out anything, Mr. Tillinghast.

A. Then I will have to say, Mr. Davis, that your letter of May 16, 1961, written to the board of directors, saying that you had been retained by Hughes Tool Company in connection with its acquisition and possible distribution of [fol. 6106] debentures—

Q. Wasn't that a letter by me as a member of the firm of Simpson, Thacher & Bartlett?

A. That's correct, yes.

Q. It was a letter by Simpson, Thacher & Bartlett to the board of directors of TWA, dated May 16th?

A. That's right.

Q. That is one letter that you had in mind as being an interference with TWA—

A. To the extent that it was part of an overall plan to interfere with the purchase of Boeing aircraft, although I suppose the letter, on its face, is, let us say, fairly innocuous and routine.

The letter of May 19, 1961, to the Securities and Exchange Commission, is, in my view, a clear interference with the management of TWA.

Your telegram of May 22, 1961 appears to be routine and harmless.

Q. Likewise, the telegram of May 22, 1961, which merely advises of Simpson, Thacher & Bartlett's withdrawal.

Please clip those. I think it will prevent any possible error by the reporter as he subsequently marks them, so we will be sure the court record will be complete as well as accurate.

[fol. 6107] Mr. Sonnett: Let's be clear, so we don't have any further needless controversy, you are asking the witness to clip not the telegram from Simpson, Tacher advising of their withdrawal, you are asking him to clip only the ones which he characterizes as overt and clear indications of interference?

Mr. Davis: I am asking him to identify what he was referring to when he testified as he did at the parts in the record that I previously mentioned, Mr. Sonnett, and since in one of his answers he admitted that some of them were appropriate, I am telling him that I am not asking him to identify any communication which he thought was appropriate.

Mr. Sonnett: Okay. All right. Now we understand what you are supposed to do with the paper clips.

Mr. Davis: Whenever you are interested to pursue the subject as to what happened in connection with the withdrawal of Simpson. Thacher & Bartlett or my withdrawal from that firm in order to continue to represent Hughes Tool Company so as to bring out the facts, I will be very happy to pursue that subject either under oath or in appropriate affidavits to the Court.

Mr. Sonnett: Mr. Davis, I know the firm of Simpson, [fol. 6108] Thacher & Bartlett for many years, and I regard it as an outstanding and very distinguished firm.

A. A letter of May 24, 1961, from Mr. Settles to Mr. Duckworth, which, on its fact, is harmless, except in the light of the purpose for which it was written.

The same—well, on May 25, 1961, there is a letter to Mr. Hocker of the Securities and Exchange Commission, which I deem to have been for the purpose of delaying the effectiveness of TWA's registration.

On May 25, 1961 there was a letter from Mr. Settles addressed to me, on its face unobjectionable, except for the purpose for which it was written.

The same may be said for the second letter—I will clip the two of them together here—from Mr. Settles as of the same date.

On May 26, 1961 there is a letter from Mr. Davis to the Irving Trust Company, the Equitable Life Assurance Society, Metropolitan Life Insurance Company, the director of Trans World Airlines, and Messrs. Breech, Olds and Holliday, the purpose of which, in my opinion—the purpose and effect of which, in my opinion, was to interfere with the affairs of TWA.

There is a letter dated May 26, 1961, from Mr. Holliday [fol. 6109] to Mr. Breech, Mr. Olds and Mr. Holliday, which, on its face, appears to be harmless.

There is a letter dated May 26, 1961—

Q. Excuse me. I don't think you finished your last answer.

Mr. Davis: Read back what Mr. Tillinghast said.

(The answer was read.)

Q. Is that what you said, Mr. Tillinghast?

A. Yes.

Q. I am not asking you to identify those that you consider harmless.

A. I am sorry. There is a letter dated May 26th—I will skip that.

Telegram dated May 31, 1961, from Hughes Tool to Boeing Aircraft Company.

Letter dated May 31st—it should be telegram dated June 1, 1961, from Chester C. Davis to Mr. Rowe.

Telegram dated June 2, 1961, from Mr. Holliday to me.

Letter dated June 4, 1961, from Mr. Davis to Mr. Rowe.

Letter dated June 4, 1961, from Mr. Davis to Mr. Olds.

[fol. 6110] Letter dated June 8, 1961, from Mr. Davis to Mr. Breech.

Letter dated June 9, 1961, from Mr. Holliday to me, which on its face appears harmless, and appears objectionable only so far as it is part of a plan and conspiracy.

A letter from Mr. Holliday to Trans World Airlines, Mr. Breech, Mr. Olds, Mr. Holliday, Irving Trust Company, Equitable Assurance Society, Metropolitan Life Insurance Company.

Q. When you refer to Irving Trust Company, isn't it addressed to Irving Trust Company as agent?

A. Yes, it is.

Mr. Sonnett: You haven't given the date.

A. Dated June 10, 1961.

Q. Is that what has previously been marked as Defendant's Exhibit 10 as containing several proposals (handing to witness)?

A. Yes.

Mr. Davis: Actually, the record might show it is addressed to Messrs. Breech, Olds and Holliday as voting trustees.

Mr. Sonnett: From?

Mr. Davis: From Hughes Tool Company, by Mr. Holliday.

[fol. 6111] Mr. Sonnett: The same Mr. Holliday?

Mr. Davis: Oh, yes.

Mr. Sonnett: Now I understand the true meaning of the song I'm Going To Sit Right Down And Write Myself A Letter.

Mr. Davis: When they do that, please send it COD to Mr. Sonnett, because we don't want to pay for it.

Mr. Sonnett: I will pay for it. It was worth it, Mr. Davis.

[fol. 6112] A. A telegram dated June 20, 1961, from Mr. Holliday to Mr. Sessel, a copy of which, I think, or a telegram similar to which was sent to each of the other directors.

A letter dated June 21, 1961, from Mr. Holliday to the board of directors of TWA.

A letter from Mr. Davis to Mr. Rowe of June 21, 1961.

Letter from Mr. Settles dated June 27, 1961.

Letter of June 30, 1961, from Mr. Davis to Mr. Reed.

I think that covers the list, Mr. Davis, up to the filing of the complaint.

Mr. Davis: Will the reporter then mark all those documents identified by Mr. Tillinghast as Defendants' Exhibit 11, and each document identified with a letter.

• • • • • • •

[fol. 6289] By Mr. Davis:

Q. Then I believe you testified that the other occasions that you recall, when you discussed the financial condition [fol. 6290] or financial problems, as I understood them, of the Tool Company, was in connection with this subordinated debenture offering?

A. Yes.

Q. And that was a discussion at that time that you had with Mr. Leslie?

A. Yes.

Q. What was the occasion for that discussion? Can you give me the substance of what was said?

A. Well, the occasion for the discussion, Mr. Davis, as best I recall it, is that Mr. Leslie came into my office one day and said that he had been talking with a Mr. Forrester whom he knew—I believe they both live in Greenwich—and that Mr. Forrester said that he had been retained just a

day or two before in order to handle a proposed public offering of Hughes Tool Company share—secondary offering of the Hughes Tool Company share of our subordinate debentures.

He said that Mr. Forrester wanted to talk with us about a possible delay of the effective date of our offering so as to accommodate this.

I remember saying to Mr. Leslie, or asking Mr. Leslie what did he think this was all about, and did he have any recommendation. He went on to say—

[fol. 6291] Q. "He," being Leslie?

A. Leslie. He went on to say that he had been associated with Mr. Hughes for years, and knew him like a book, and that one thing he knew about Mr. Hughes was that if he was planning to go across the street to buy a package of cigarettes, that he would say that he was going in the other direction to go to the bathroom.

He said, "You better take a good, hard look at this before you say anything about it."

We discussed why Hughes Tool Company wished to dispose of these. Whether it presaged a decision to sell out its interest in TWA or whether it indicated something else, and without having a very clear recollection in my mind just what he had to say about the details of the Hughes Tool Company's finances, I do recall that there was some discussion of it at that time.

Q. That offering by TWA was one which was being undertaken pursuant to the agreements entered into in the December 1960 financing, isn't that right?

A. That is correct.

Q. That offering by TWA was not designed to raise any cash by TWA, was it?

A. No, that was merely to re-finance the obligation to Hughes Tool.

[fol. 6292] Q. The $100 million interim note to Hughes Tool?

A. That is right.

Q. So that the timing of that offering would not result in TWA having any more or less equity money or working capital or cash, isn't that right?

A. That is correct.

Q. Except perhaps to the limited extent to which the Tool Company had an option to subscribe to an additional $11 million-some odd of these debentures?

A. So far as the timing is concerned.

Q. That offering was for $11 million, but only the Tool Company had an option to subscribe to the additional $11 million; isn't that correct?

A. Substantially, yes.

Q. Mr. Leslie discussed with you an approach made to him by Mr. Forrester; is that correct?

A. Right.

Q. Mr. Forrester is a senior executive of Merrill, Lynch, Fenner & Bean; is that correct?

A. He is a member of the firm. I am not sure just what his seniority is.

Q. You never had any reason to doubt the bona fides of Mr. Forrester or Merrill, Lynch, have you?

A. No.

[fol. 6293] Q. And Mr. Leslie reported to you that apparently the Hughes Tool Company was interested in making a secondary offering?

A. That is correct.

Q. And did that indicate to you that therefore the Hughes Tool Company was interested in effect of realizing some cash?

A. Well, that would indicate that, yes.

Q. Was it your understanding that the Hughes Tool Company had furnished a great deal of cash in connection with the aircraft equipment obtained by TWA as a result of orders placed, or the transactions which took place in 1959 and 1960?

A. Yes, I was aware of that.

Q. And the Tool Company in connection with the 1960 financing, had received this $100 million interim note rather than cash?

A. That is right.

Q. The $100 million note in effect reflected the cash investment made by the Tool Company in connection with the aircraft obtained by TWA?

A. That is my understanding.

Q. And now apparently the Tool Company indicated an interest or desire to get some cash back; is that right?

[fol. 6294] A. Yes.

Q. And you thought in your discussions with Mr. Leslie that there was some underlying motive of the Tool Company that should be explored?

A. Mr. Leslie raised that question, yes.

Q. That was when Mr. Leslie explained to you that based upon his prior association with Mr. Hughes, he felt that Mr. Hughes was likely to go a long way around to buy a package of cigarettes?

A. Right.

Q. Was there any discussion at that time as to what would the Tool Company do with all this cash if it once got that secondary offering—if it was successful?

A. I think, as I recall it, Mr. Davis, there was some discussion of whether the Tool Company was hard up and really needed this money, and what they would do with it. I don't remember much of the detail of what was said, but I know that general subject was discussed.

Q. I would like you to concentrate on that conversation with Mr. Leslie, if you will, please. I would like you to tell me whether or not in effect there was a discussion with Mr. Leslie speculating as to whether or not the Hughes Tool Company might have in mind a plan for re-financing the TWA debt to the lending institutions?

[fol. 6295] A. I believe, Mr. Davis, that there was some mention of that possibility.

Q. It was discussed, wasn't it?

A. I believe it was discussed.

Q. That was an important subject to you, was it not?

A. Not terribly, no, sir.

Q. If you recall, when you were hired as president, one of the matters of concern to you—whether you raised the subject or Mr. Breech did—had to do with the possibility of the Tool Company ever being able to re-finance?

A. That is correct.

Q. And here we were in the same year, in May of the same year, and there was a move made by the Tool Company which on the surface at least appeared desirous of producing about $100 million in cash, and you didn't associate the two possibilities at all in your mind, Mr. Tillinghast?

A. Mr. Davis, I am sure that I must have associated the two things in my mind in a broad sense. It has been my feeling, however, that so far as the management of TWA is concerned, its job is to manage TWA—to try to further the interests of the corporation and all of its stockholders—[fol. 6296] and not be concerned with matters personal to particular stockholders.

Q. I am not inquiring at this point as to your views as to the duties of the management of TWA. I am interested in what took place when Mr. Leslie reported to you that Mr. Forrester had been asked by the Tool Company to develop a program designed to effect a secondary offering which would have given the Tool Company, or replenished the Tool Company with more or less $100 million.

A. I have reported it as best I can, Mr. Davis.

Q. Do you think you have fairly and adequately and fully described your conversation with Mr. Leslie in discussing or speculating as to what Mr. Hughes or the Hughes Tool Company was up to?

A. As best I can recall it at the moment, yes.

Q. Do you have any notes or letters or communications that you made to anyone else which would help you to refresh your recollection?

A. Not on this subject, no.

Q. Do you have any notes, in Defendants' Exhibit 1, your calendar, that would help you to identify about when it was you had this conversation with Mr. Leslie?

A. Yes, I can tell you when it was. If I am not mistaken, [fol. 6297] it was on the 11th day of May, because I believe it was the day before I sat down with Mr. Forrester and some other people to discuss this specific request.

Q. As a result of your conversation with Mr. Leslie, you asked him to arrange for a meeting between you and Mr. Forrester and others?

A. Yes. I believe that the purpose of Mr. Leslie's coming in to my office was in order to say that Mr. Forrester wanted to come up and discuss the matter with me.

Q. You find that entry on May 12th, do you not?

A. That is correct, yes.

Q. And Mr. Leslie spoke to you about that on May 11th, the day before?

A. That is correct.

Q. Before you met with Mr. Forrester, didn't you call Mr. Breech to tell him about the information?

A. No, I am quite sure I called Mr. Breech after I talked with Mr. Forrester.

Q. You mean on the 12th?

A. On the 12th, yes.

Q. Tell us about your meeting with Mr. Forrester on the 12th then.

A. Mr. Forrester came up with his lawyer, Mr. Hagar.

[fol. 6298] Q. Of the Sherman, Sterling firm?

A. Yes. We discussed this thing, and he outlined it.

Q. What did he outline to you?

A. He outlined the proposal that they wanted to make.

Q. Who is "they"?

A. Merrill, Lynch—wanted to make for the secondary offering, and their desire to obtain a week's postponement of our offering, in order that they might do a secondary.

I told them that I was very concerned about the fact that we had committed ourselves to the Boeing Company for planes that we had to have our financing completed by the end of the month, by the 31st of May, as I recall it, and that one thing that I had to be concerned about was whether or not a postponement of this might interfere in any way with the consummation of the Boeing program, and the obtaining of the commitments necessary to carry out the Boeing program.

[fol. 6299] Q. Will you explain at this point your understanding as a chief executive of TWA, what the relationship was of this offering by TWA of these convertible debentures, which would not produce any cash for TWA, the financing arrangements with the lending institutions, which was related to this Boeing purchase program—

Mr. Sonnett: Would you mind reading that back?

(The question was read.)

A. One of the obvious questions in my mind, Mr. Davis, was whether or not if we ran into a serious delay on this, whether or not it might in any way affect our Boeing financing. With that in mind, I talked with Mr. Brandi.

Q. Of Dillon, Read?

A. Yes, to ask him whether in his opinion it would make any difference one way or another to the consummation of the Boeing financing. He said he thought it would. He thought it would be undesirable to get mixed up in anything that would involve a serious sag in the schedule.

For that reason I was very concerned at the time of this meeting with Mr. Forrester to see whether or not he [fol. 6300] could say anything that would change my judgment.

Q. Let me see if we can get this straightened out in my mind.

A. May I finish?

Q. Please continue.

A. My judgment that it was the most unlikely thing that one could suddenly bring in a third party, and in one week's time turn an offering of this sort into an underwritten public offering.

I specifically taxed Mr. Forrester and Mr. Hagarty with the question of whether or not they could assure me that in fact this could be done, and told them my own limited experience in the securities field—told me that even under the best circumstances it would be most unlikely that one could do this within that period of time. And I thought if Mr. Hughes was genuine in wishing to make an offering of his interest, that we would extend to him every cooperation on a secondary offering, and indeed the lawyers discussed how by stickering the prospectus, this could be done immediately following our offer.

To come to the end of the discussion, I told Mr. Forrester that I quite appreciated his interest in engaging in this [fol. 6301] activity, but personally I thought it was an impractical thing to do, and that while it was not a matter on which I wished to make a decision myself without consulting my chairman, in fairness to him I could only say that my recommendation would be that we not postpone our offering, but that we go right ahead with it, and extend to Hughes Tool, if it wished to do so, every courtesy with respect to a secondary offering at an immediately following date.

Q. Is that the end of your answer?

A. That is the end of my answer.

A. Then I will have to say, Mr. Davis, that your letter of May 16, 1961, written to the board of directors, saying that you had been retained by Hughes Tool Company in connection with its acquisition and possible distribution of [fol. 6106] debentures—

Q. Wasn't that a letter by me as a member of the firm of Simpson, Thacher & Bartlett?

A. That's correct, yes.

Q. It was a letter by Simpson, Thacher & Bartlett to the board of directors of TWA, dated May 16th?

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On May 25, 1961 there was a letter from Mr. Settles addressed to me, on its face unobjectionable, except for the purpose for which it was written.

The same may be said for the second letter—I will clip the two of them together here—from Mr. Settles as of the same date.

On May 26, 1961 there is a letter from Mr. Davis to the Irving Trust Company, the Equitable Life Assurance Society, Metropolitan Life Insurance Company, the director of Trans World Airlines, and Messrs. Breech, Olds and Holliday, the purpose of which, in my opinion,—the purpose and effect of which, in my opinion, was to interfere with the affairs of TWA.

There is a letter dated May 26, 1961, from Mr. Holliday [fol. 6109] to Mr. Breech, Mr. Olds and Mr. Holliday, which, on its face, appears to be harmless.

There is a letter dated May 26, 1961—

Q. Excuse me. I don't think you finished your last answer.

Mr. Davis: Read back what Mr. Tillinghast said.

(The answer was read.)

Q. Is that what you said, Mr. Tillinghast?

A. Yes.

Q. I am not asking you to identify those that you consider harmless.

A. I am sorry. There is a letter dated May 26th—I will skip that.

Telegram dated May 31, 1961, from Hughes Tool to Boeing Aircraft Company.

Letter dated May 31st—it should be telegram dated June 1, 1961, from Chester C. Davis to Mr. Rowe.

Telegram dated June 2, 1961, from Mr. Holliday to me.

Letter dated June 4, 1961, from Mr. Davis to Mr. Rowe.

Letter dated June 4, 1961, from Mr. Davis to Mr. Olds.

[fol. 6110] Letter dated June 8, 1961, from Mr. Davis to Mr. Breech.

Letter dated June 9, 1961, from Mr. Holliday to me, which on its face appears harmless, and appears objectionable only so far as it is part of a plan and conspiracy.

A letter from Mr. Holliday to Trans World Airlines, Mr. Breech, Mr. Olds, Mr. Holliday, Irving Trust Company, Equitable Assurance Society, Metropolitan Life Insurance Company.

Q. When you refer to Irving Trust Company, isn't it addressed to Irving Trust Company as agent?

A. Yes, it is.

Mr. Sonnett: You haven't given the date.

A. Dated June 10, 1961.

Q. Is that what has previously been marked as Defendant's Exhibit 10 as containing several proposals (handing to witness)?

A. Yes.

Mr. Davis: Actually, the record might show it is addressed to Messrs. Breech, Olds and Holliday as voting trustees.

Mr. Sonnett: From?

Mr. Davis: From Hughes Tool Company, by Mr. Holliday.

[fol. 6111] Mr. Sonnett: The same Mr. Holliday?

Mr. Davis: Oh, yes.

Mr, Sonnett: Now I understand the true meaning of the song I'm Going To Sit Right Down And Write Myself A Letter.

Mr. Davis:, When they do that, please send it COD to Mr. Sonnett, because we don't want to pay for it.

Mr. Sonnett: I will pay for it. It was worth it, Mr. Davis.

[fol. 6112] A. A telegram dated June 20, 1961, from Mr. Holliday to Mr. Sessel, a copy of which, I think, or a telegram similar to which was sent to each of the other directors.

A letter dated June 21, 1961, from Mr. Holliday to the board of directors of TWA.

A letter from Mr. Davis to Mr. Rowe of June 21, 1961.

Letter from Mr. Settles dated June 27, 1961.

Letter of June 30, 1961, from Mr. Davis to Mr. Reed.

I think that covers the list, Mr. Davis, up to the filing of the complaint.

Mr. Davis: Will the reporter then mark all those documents identified by Mr. Tillinghast as Defendants' Exhibit 11, and each document identified with a letter.

* * * * * * *

[fol. 6289] By Mr. Davis:

Q. Then I believe you testified that the other occasions that you recall, when you discussed the financial condition [fol. 6290] or financial problems, as I understood them, of the Tool Company, was in connection with this subordinated debenture offering?

A. Yes.

Q. And that was a discussion at that time that you had with Mr. Leslie?

A. Yes.

Q. What was the occasion for that discussion? Can you give me the substance of what was said?

A. Well, the occasion for the discussion, Mr. Davis, as best I recall it, is that Mr. Leslie came into my office one day and said that he had been talking with a Mr. Forrester whom he knew—I believe they both live in Greenwich—and that Mr. Forrester said that he had been retained just a

day or two before in order to handle a proposed public offering of Hughes Tool Company share—secondary offering of the Hughes Tool Company share of our subordinate debentures.

He said that Mr. Forrester wanted to talk with us about a possible delay of the effective date of our offering so as to accommodate this.

I remember saying to Mr. Leslie, or asking Mr. Leslie what did he think this was all about, and did he have any recommendation. He went on to say—

[fol. 6291] Q. "He," being Leslie?

A. Leslie. He went on to say that he had been associated with Mr. Hughes for years, and knew him like a book, and that one thing he knew about Mr. Hughes was that if he was planning to go across the street to buy a package of cigarettes, that he would say that he was going in the other direction to go to the bathroom.

He said, "You better take a good, hard look at this before you say anything about it."

We discussed why Hughes Tool Company wished to dispose of these. Whether it presaged a decision to sell out its interest in TWA or whether it indicated something else, and without having a very clear recollection in my mind just what he had to say about the details of the Hughes Tool Company's finances, I do recall that there was some discussion of it at that time.

Q. That offering by TWA was one which was being undertaken pursuant to the agreements entered into in the December 1960 financing, isn't that right?

A. That is correct.

Q. That offering by TWA was not designed to raise any cash by TWA, was it?

A. No, that was merely to re-finance the obligation to Hughes Tool.

[fol. 6292] Q. The $100 million interim note to Hughes Tool?

A. That is right.

Q. So that the timing of that offering would not result in TWA having any more or less equity money or working capital or cash, isn't that right?

A. That is correct.

Q. Except perhaps to the limited extent to which the Tool Company had an option to subscribe to an additional $11 million-some odd of these debentures?

A. So far as the timing is concerned.

Q. That offering was for $11 million, but only the Tool Company had an option to subscribe to the additional $11 million; isn't that correct?

A. Substantially, yes.

Q. Mr. Leslie discussed with you an approach made to him by Mr. Forrester; is that correct?

A. Right.

Q. Mr. Forrester is a senior executive of Merrill, Lynch, Fenner & Bean; is that correct?

A. He is a member of the firm. I am not sure just what his seniority is.

Q. You never had any reason to doubt the bona fides of Mr. Forrester or Merrill, Lynch, have you?

A. No.

[fol. 6293] Q. And Mr. Leslie reported to you that apparently the Hughes Tool Company was interested in making a secondary offering?

A. That is correct.

Q. And did that indicate to you that therefore the Hughes Tool Company was interested in effect of realizing some cash?

A. Well, that would indicate that, yes.

Q. Was it your understanding that the Hughes Tool Company had furnished a great deal of cash in connection with the aircraft equipment obtained by TWA as a result of orders placed, or the transactions which took place in 1959 and 1960?

A. Yes, I was aware of that.

Q. And the Tool Company in connection with the 1960 financing, had received this $100 million interim note rather than cash?

A. That is right.

Q. The $100 million note in effect reflected the cash investment made by the Tool Company in connection with the aircraft obtained by TWA?

A. That is my understanding.

Q. And now apparently the Tool Company indicated an interest or desire to get some cash back; is that right?

[fol. 6294] A. Yes.

Q. And you thought in your discussions with Mr. Leslie that there was some underlying motive of the Tool Company that should be explored?

A. Mr. Leslie raised that question, yes.

Q. That was when Mr. Leslie explained to you that based upon his prior association with Mr. Hughes, he felt that Mr. Hughes was likely to go a long way around to buy a package of cigarettes?

A. Right.

Q. Was there any discussion at that time as to what would the Tool Company do with all this cash if it once got that secondary offering—if it was successful?

A. I think, as I recall it, Mr. Davis, there was some discussion of whether the Tool Company was hard up and really needed this money, and what they would do with it. I don't remember much of the detail of what was said, but I know that general subject was discussed.

Q. I would like you to concentrate on that conversation with Mr. Leslie, if you will, please. I would like you to tell me whether or not in effect there was a discussion with Mr. Leslie speculating as to whether or not the Hughes Tool Company might have in mind a plan for re-financing the TWA debt to the lending institutions?

[fol. 6295] A. I believe, Mr. Davis, that there was some mention of that possibility.

Q. It was discussed, wasn't it?

A. I believe it was discussed.

Q. That was an important subject to you, was it not?

A. Not terribly, no, sir.

Q. If you recall, when you were hired as president, one of the matters of concern to you—whether you raised the subject or Mr. Breech did—had to do with the possibility of the Tool Company ever being able to re-finance?

A. That is correct.

Q. And here we were in the same year, in May of the same year, and there was a move made by the Tool Company which on the surface at least appeared desirous of producing about $100 million in cash, and you didn't associate the two possibilities at all in your mind, Mr. Tillinghast?

A. Mr. Davis, I am sure that I must have associated the two things in my mind in a broad sense. It has been my feeling, however, that so far as the management of TWA is concerned, its job is to manage TWA—to try to further the interests of the corporation and all of its stockholders—[fol. 6296] and not be concerned with matters personal to particular stockholders.

Q. I am not inquiring at this point as to your views as to the duties of the management of TWA. I am interested in what took place when Mr. Leslie reported to you that Mr. Forrester had been asked by the Tool Company to develop a program designed to effect a secondary offering which would have given the Tool Company, or replenished the Tool Company with more or less $100 million.

A. I have reported it as best I can, Mr. Davis.

Q. Do you think you have fairly and adequately and fully described your conversation with Mr. Leslie in discussing or speculating as to what Mr. Hughes or the Hughes Tool Company was up to?

A. As best I can recall it at the moment, yes.

Q. Do you have any notes or letters or communications that you made to anyone else which would help you to refresh your recollection?

A. Not on this subject, no.

Q. Do you have any notes, in Defendants' Exhibit 1, your calendar, that would help you to identify about when it was you had this conversation with Mr. Leslie?

A. Yes, I can tell you when it was. If I am not mistaken, [fol. 6297] it was on the 11th day of May, because I believe it was the day before I sat down with Mr. Forrester and some other people to discuss this specific request.

Q. As a result of your conversation with Mr. Leslie, you asked him to arrange for a meeting between you and Mr. Forrester and others?

A. Yes. I believe that the purpose of Mr. Leslie's coming in to my office was in order to say that Mr. Forrester wanted to come up and discuss the matter with me.

Q. You find that entry on May 12th, do you not?

A. That is correct, yes.

Q. And Mr. Leslie spoke to you about that on May 11th, the day before?

A. That is correct.

Q. Before you met with Mr. Forrester, didn't you call Mr. Breech to tell him about the information?

A. No, I am quite sure I called Mr. Breech after I talked with Mr. Forrester.

Q. You mean on the 12th?

A. On the 12th, yes.

Q. Tell us about your meeting with Mr. Forrester on the 12th then.

A. Mr. Forrester came up with his lawyer, Mr. Hagar.

[fol. 6298] Q. Of the Sherman, Sterling firm?

A. Yes. We discussed this thing, and he outlined it.

Q. What did he outline to you?

A. He outlined the proposal that they wanted to make.

Q. Who is "they"?

A. Merrill, Lynch—wanted to make for the secondary offering, and their desire to obtain a week's postponement of our offering, in order that they might do a secondary.

I told them that I was very concerned about the fact that we had committed ourselves to the Boeing Company for planes that we had to have our financing completed by the end of the month, by the 31st of May, as I recall it, and that one thing that I had to be concerned about was whether or not a postponement of this might interfere in any way with the consummation of the Boeing program, and the obtaining of the commitments necessary to carry out the Boeing program.

[fol. 6299] Q. Will you explain at this point your understanding as a chief executive of TWA, what the relationship was of this offering by TWA of these convertible debentures, which would not produce any cash for TWA, the financing arrangements with the lending institutions, which was related to this Boeing purchase program—

Mr. Sonnett: Would you mind reading that back?

(The question was read.)

A. One of the obvious questions in my mind, Mr. Davis, was whether or not if we ran into a serious delay on this, whether or not it might in any way affect our Boeing financing. With that in mind, I talked with Mr. Brandi.

Q. Of Dillon, Read?

A. Yes, to ask him whether in his opinion it would make any difference one way or another to the consummation of the Boeing financing. He said he thought it would. He thought it would be undesirable to get mixed up in anything that would involve a serious sag in the schedule.

For that reason I was very concerned at the time of this meeting with Mr. Forrester to see whether or not he [fol. 6300] could say anything that would change my judgment.

Q. Let me see if we can get this straightened out in my mind.

A. May I finish?

Q. Please continue.

A. My judgment that it was the most unlikely thing that one could suddenly bring in a third party, and in one week's time turn an offering of this sort into an underwritten public offering.

I specifically taxed Mr. Forrester and Mr. Hagarty with the question of whether or not they could assure me that in fact this could be done, and told them my own limited experience in the securities field—told me that even under the best circumstances it would be most unlikely that one could do this within that period of time. And I thought if Mr. Hughes was genuine in wishing to make an offering of his interest, that we would extend to him every cooperation on a secondary offering, and indeed the lawyers discussed how by stickering the prospectus, this could be done immediately following our offer.

To come to the end of the discussion, I told Mr. Forrester that I quite appreciated his interest in engaging in this [fol. 6301] activity, but personally I thought it was an impractical thing to do, and that while it was not a matter on which I wished to make a decision myself without consulting my chairman, in fairness to him I could only say that my recommendation would be that we not postpone our offering, but that we go right ahead with it, and extend to Hughes Tool, if it wished to do so, every courtesy with respect to a secondary offering at an immediately following date.

Q. Is that the end of your answer?

A. That is the end of my answer.

Q. Now let us go back to May 11th, when Mr. Leslie first talked to you. Do you understand?

A. Yes.

Q. That was the first time that you heard of the plan of the Tool Company to make a secondary, is that correct?

A. That is correct.

Q. The next day, the 12th, you met with Mr. Forrester?

A. That is correct.

Q. Am I to understand that between the 11th and the 12th, you consulted with Mr. Brandi of Dillon, Read?

[fol. 6302] A. That is correct.

Q. In other words, after Mr. Leslie made his report to you to the effect that Mr. Forrester wanted to speak to you—

A. That is right.

Q. You became concerned and sought the advice of someone else?

A. That is correct.

Q. The first thing I want you to explain to me is your concern as a chief executive of TWA, to what was the problem that you envisaged that required you to consult someone.

A. The question in my mind, Mr. Davis, was that raised by Mr. Leslie, and I will have to amplify slightly what I have already testified to.

One thing that Mr. Leslie said in the course of this conversation relative to Mr. Hughes, was that one of the particular proclivities was delaying and trying to get extensions of time, and if you can't get it decided the way you want it now, just postpone it and postpone it.

He raised the question at that time as to whether or not this would be just the beginning of a series of postponements, the net effect of which would be to derail—would [fol. 6303] be to prevent the consummation of the subordinate debenture financing on the schedule provided, and by that derail the Boeing financing which we had until the 31st of May to complete.

I was naturally very concerned with seeing to it that nothing was done which would prejudice the Boeing financing.

Q. I would like to take this one at a time, Mr. Tillinghast.

A. All right.

Q. The 1960 financing required TWA to make this debenture offering on or before May 31st?

A. Right.

Q. That was an agreement between the Tool Company on the one hand, and TWA on the other, is that correct?

A. Right.

Q. And that financing was not going to produce any cash to TWA—that offering?

A. Not unless we sold more than $100 million.

Q. Whether you sold more than $100 million was solely at the election of the Tool Company?

A. That is right.

Q. Mr. Leslie indicated to you that this request was about to be made on behalf of the Tool Company, on May 11th—[fol. 6304] that might have the effect of delaying this transaction beyond May 31st, if you granted further and subsequent delays?

A. That is right.

Q. You had a feeling that Mr. Hughes or the Hughes Tool Company would make repeated requests that might delay this offering beyond May 31st? That was your concern, was it not?

A. That is correct.

Q. That would have involved possibly some new agreement or understanding between the Tool Company and TWA, because you had a commitment to do it by May 31st, is that correct?

A. That is correct.

Q. What I am failing to understand is, the relationship between that obligation to the Tool Company and the financing of the Boeing acquisition, that you had been negotiating with the lending institutions.

Can you explain how you, as a chief executive officer—what was concerning you? What relationship was there between a delay in this offering by TWA, and the financing of the Boeing purchase?

A. Mr. Davis, there were really two things that concerned me.

[fol. 6305] Q. Excuse me for a moment before you answer. I am not interested at this moment what Mr. Brandi told

you. I am asking you what was concerning you before you went to see Mr. Brandi.

A. I was concerned about two things. One, whether this was a diversionary tactic.

Q. Diversionary tactic by whom?

A. By Hughes Tool Company.

Q. Diversion from what?

A. An attempt by Hughes Tool Company somehow to interfere with and prevent the consummation of the Boeing deal.

Q. At that point you had not received any letters from anyone from the Tool Company objecting to the Boeing deal?

A. That is correct.

Q. In fact, you hadn't disclosed the proposed Boeing deal to the Tool Company?

A. Yes, we had.

Q. In what way?

A. In the minutes of the directors' meeting, and quite a number of things that Mr. Holliday had received.

Q. You anticipated that the Tool Company might have [fol. 6306] some views different from or adverse to those held by the TWA management with respect to the Boeing program, is that correct?

A. That question came up in my mind when Mr. Leslie talked with me on the 11th.

Q. And therefore you were suspicious that this move by Mr. Hughes or the Tool Company might be used in what way that would interfere with the Boeing program?

A. As a means of preventing the consummation of the financing that would make the Boeing deal possible.

Q. How could that happen other than possibly the re-financing of the existing indebtedness, you mean?

A. Mr. Davis, that very nearly did happen as a consequence of your efforts.

Q. The re-financing?

A. No, the consummation of the Boeing financing was in fact almost upset as the result of your actions between this time and the two weeks subsequent to that.

Q. I appreciate that. At the moment, however, I am trying to understand how the successful secondary offering

by the Tool Company, which would have put into cash $100 million, more or less, how that fact in your judgment, on [fol. 6307] May 11th, contributed to your feeling that the Tool Company might have some devious plan to interfere with your Boeing program?

A. The secondary offering, the successful secondary offering in and of itself would have presented no problem at all, Mr. Davis. What I was concerned about was that this was not a genuine proposal, and that the effect of granting a week's delay would have been—a week's delay which in my opinion was quite unrealistic.

The effect of that would have been to delay and perhaps prevent the consummation of the subordinate debenture financing, and that if we were mired down in that problem, that the financial institutions would not honor the very informal commitments that we had at that time to go ahead with the financing, and that as a consequence of this, the whole situation would be upset.

Q. I am having difficulty in understanding, Mr. Tillinghast, and I want to give you a full opportunity to explain why you concluded that the possibility which you thought was remote, perhaps, of accomplishment with just a week's delay—why the possibility that the Tool Company might realize $100 million in cash, would have an adverse effect, or mire you down, or bog you down in your Boeing program. [fol. 6308] A. You keep trying to put words in my mouth. I tried to say before that the consummation of the secondary offering by the Hughes Tool Company would not have been any problem whatever.

Indeed, I would have welcomed it. But what I was concerned about was not that we were dealing with a secondary offering, and the realization of money by the Hughes Tool Company, but rather a maneuver which would have the effect of preventing consummation of our offering. And through that would upset and prevent the Boeing financing.

Q. Was there some condition in the negotiations with the lending institutions in connection with this Boeing financing that you had in mind, that would be upset, if for any reason this offering by TWA, which was not going to realize any cash, was delayed beyond May 31st?

A. There was no condition, Mr. Davis. I can only say that the consummation of the secondary financing—I am sorry—the consummation of the debenture offering on the time schedule originally planned was one of the background factors in everyone's contemplation in connection with the financing for the Boeing plans.

I was deeply conscious of the fact that I had expended [fol. 6309] $850,000, and was committed for $187 million, for which I had to get my financing nailed down, and I wasn't going to do anything that carried with it a serious threat of unhinging that financing.

Q. Mr. Tillinghast, let me lead you a little, if I may. Prior to this additional financing of Boeing, for this $187 million and a half—the amount due the financing institutions was how much?

A. Before this?

Q. Before the Boeing financing, what was the amount due to these lending institutions?

A. I am not sure of the amount actually due at that time, but the amount of the commitment was $165 million, all of which I don't think—

Q. Isn't it true if the Tool Company realized $100 million in the marketplace, that it might be close enough to the goal of refinancing that $165 million?

A. That was certainly a possibility.

Q. And you discussed it?

A. Yes.

Q. It was very important to you that the additional financing with the lending institutions for $147 million be an accomplished fact before the Tool Company could raise [fol. 6310] a sum of money that conceivably might permit it to refinancing the 1960 debt, isn't that right?

A. No, it is not.

Q. Isn't it true, Mr. Tillinghast, that in February 1961, you discussed with Mr. Breech, the Tool Company would have difficulty in refinancing for additional jet equipment?

A. At the time I talked with Mr. Breech on the 28th, I was concerned with the question as to whether or not I wanted to seriously entertain the possibility of becoming a chief executive of this company. Subsequent to that time, in pursuance of the discussions had at that time, I worked

out a contract which I thought put me in a position to call the shots as I saw them, without concern as to whether or not the control of TWA stayed in one place rather than the other?

At the time you speak of, and since that time, I have tried to conduct the affairs of TWA in such a way as not to favor or prejudice any particular stockholder, and I think my job is to call them as I see them, without regard to these things that you are concerned about.

Q. But it is a fact that the May 31st date with respect to the issuance of these debentures by TWA was a time [fol. 6311] limit had been placed for the benefit of the Tool Company rather than for the benefit of TWA?

A. So far as I know, yes.

Q. So that if there had been a delay beyond May 31st, or if in fact TWA should have consented to delays beyond May 31st, it would have been basically a detriment to the Tool Company rather than TWA?

A. It would have been a detriment to the TWA if it in any way affected the Boeing financing.

Q. The only way in which it could have affected the Boeing financing is that the Tool Company would have had a lot of cash in its pocket?

A. No, it is not, Mr. Davis, and you know a lot better than that.

Q. Isn't it true, Mr. Tillinghast, that it was Mr. Breech who suggested to you that before you took the position you ought to consult with Mr. Brandi of Dillon, Read for expert advice?

A. It is not my recollection. At the moment I don't have any recollection of having talked with Mr. Breech about this until after I talked with Mr. Forrester. Possibly if I did, but if I did, it doesn't stick in my mind.

As I recall it, that was something that Mr. Leslie and I [fol. 6312] agreed on as the result of this discussion which I have already described.

Q. I am trying to refresh your recollection that the first time you talked to Mr. Brandi of Dillon, Read, was after your first meeting with Mr. Forrester, and after you talked to Mr. Breech, who warned you or suggested to you that before you took a position in this matter, you ought to consult "the financial advisers"?

A. No. As a matter of fact, I talked with Mr. Brandi just before I talked with Mr. Forrester.

Q. On the 12th?

A. On the 12th.

Q. After talking to him on the 11th?

A. I don't think I talked with him on the 11th.

Q. After your conversation with Mr. Leslie?

A. No, I think I talked with Mr. Brandi, so far as I can recall, only on the 12th.

Q. Was that a telephone conversation, a meeting or a conference?

A. It was a meeting in my office.

Q. Who else was there?

A. Mr. Leslie, Mr. Rowe was there, I think.

Q. Mr. Rowe, the general counsel of TWA?

[fol. 6313] A. Mr. Rowe who sits down there.

Q. Counsel for TWA?

A. Yes. I am trying to remember when he got there. Mr. Reed, I think, was also there.

Q. Of the Hughes, Hubbard firm?

A. Yes.

Q. Counsel for the voting trustees?

A. Yes. At the time of the discussion with Mr. Forrester—and I think he was there at the time of the discussion with Mr. Brandi as well. I think that is the extent of it.

The Special Master: Let us take a five-minute recess.

(Whereupon, a short recess was taken.)

By Mr. Davis:

Q. Mr. Tillinghast, before the recess, you were about to finish to identify the meeting at your office with Dillon, Read, and others. But before you resume at that point, I overlooked asking you whether at or about that time you had a discussion with Mr. Sessel as to what the plans or purposes or consequences to TWA might be if the Tool Company was able to raise a substantial amount of cash

A. No, I don't think I did, Mr. Davis. I am quite sure [fol. 6314] that somewhere within this period, I mean sometime between the 11th of May and the board meeting on the

17th of May, I discussed this with Mr. Sessel, and I know Mr. Sessel was quite concerned that this was a delaying tactic, and should be dealt with as such.

Q. That was between May 11th and May 17th?

A. Yes. I can't tell you exactly when it was in the progression of things, but I know that I discussed the thing with Mr. Sessel, to get his view as to how the banks would react to the thing.

Q. Do you recall more specifically what Mr. Sessel said to you at that time as to what his ideas were of the objectives of the Tool Company, and the plans?

A. No, I don't recall discussing that with him as such. The one thing that sticks in my mind was that Mr. Sessel said not once, but several times, that Hughes always wants time, he wants a week if he can get a week, and if he can't, a day, and if he can't get an hour, he will want half an hour. His view was very definite and strong that if we gave a week's delay, then that would be followed by a request for a further delay and a further delay, and it would be an endless matter.

[fol. 6315] Q. Did he express the point of view that such delays would be injurious to TWA?

A. Yes, he expressed the view that failure to carry out a consummation of the subordinate debenture offering might raise questions as to what it was all about.

Q. Raise questions in whose mind?

A. The financing institutions' minds, and might prejudice the Boeing financing.

Q. You keep referring to problems being raised in people's minds. It is not clear to me that you have identified to me what problem you had in your mind or you understood them to be referring to, Mr. Tillinghast.

A. I personally was concerned about the fact that we had a very short time within which to finalize our Boeing financing.

Q. I understand that.

A. And I didn't want to do anything that might give anyone any reason or concern for not carrying through with the financing on the basis of the informal commitments given. It was my strongly held view then, as it is now, that when you are dealing in figures of this magnitude, that

the sooner you get the thing signed, sealed and delivered, and definitely nailed down, the better off you are.

[fol. 6316] Q. Do you know who Bob Kerr is?

A. Yes.

Q. Who is he?

A. Mr. Sessel's assistant.

Q. He is at the Irving Trust?

A. Yes.

Q. Only for the purpose of refreshing your recollection, Mr. Tillinghast, let me refer you to some notes of a telephone conversation between Mr. Kerr and Mr. Gordon of the Bank of America.

Mr. Sonnett: Would you mind marking that and identifying the source, Mr. Davis?

Mr. Davis: I will identify it.

By Mr. Davis:

Q. I want you to look at this, and particularly call to your attention the line which says "Odlum and Bautzer are in New York scurrying around on this matter. Ben thinks only one reason why Hughes wants money—to buy out a voting trust. Crown might come up with balance of money."

That is dated May 16, 1961. Does that refresh you at all as to what Mr. Sessel was in fact saying to you as to what the problems and dangers were?

[fol. 6317] Mr. Sonnett: Have we identified this document yet?

Mr. Davis: At this moment I merely want to know if this refreshes the witness' recollection. We will get the documents in when we get the Bank of America.

Mr. Sonnett: You have shown something to the witness. It hasn't been marked and identified.

Mr. Davis: I will mark it for identification.

(Transcript of telephone conversation, marked Defendants' Exhibit 22 for identification, as of this date.)

By Mr. Davis:

Q. Now I refer you to Defendants' Exhibit 22 for identification.

Mr. Sonnett: These are notes by who?

The Witness: Mr. Gordon, I gather.

Mr. Davis: Bank of America, Bob Gordon's files.

The Witness: No, it does not.

Q. That was about the time we are now discussing the offering by TWA?

A. Yes, this would have been about the time I talked with Mr. Sessel.

Q. And it is your clear recollection that when you discussed this matter with Mr. Sessel, before the board meet-
[fol. 6318] ing of the 17th, that this subject, if not in those exact words, but the same subject matter did not come up for discussion?

A. Mr. Davis, it is not my clear recollection that this subject did not come up. My only recollection that is distinct of my discussions with Mr. Sessel was to the effect that he was very concerned about this being a delaying and diversionary tactic, and his feeling that it would be a mistake, and maybe spread some doubt and concern among the financial institutions if we failed to go ahead with the debenture offering within the time required by the original—

Q. How about the possibility of the voting trust terminating—that was important, wasn't it?

A. Not to me.

Q. It wasn't?

A. Not in this context.

Q. Do you think the termination of the voting trust might have adversely affected the financing?

A. I am sure it would have.

Q. When you come right down to it, the interference that might have taken place in the Boeing financing program was that if the Tool Company was able to raise that much money, conceivably they might make an effort to
[fol. 6319] terminate the voting trust, and in turn that would affect the lending institutions, isn't that right?

A. No, Mr. Davis. The only way the voting trust could be terminated would be by buying out the whole financing. My concern was not with that. Indeed we expressed the willingness repeatedly to cooperate in every way—

Q. Expressed willingness to whom, sir?

A. To Mr. Forrester, and it seems to me to other people, but I know particularly in the case of Mr. Forrester, and I will stick with him. We repeatedly expressed the willingness to cooperate in every way with a secondary offering just as rapidly as the Tool Company wanted to do it, and except for delaying the orderly progression of ovn financing plans, we did everything we could to cooperate with the Tool Company in anything they wanted to do.

Q. Delaying what financing plans, Mr. Tillinghast?

A. Mr. Davis, I have repeatedly testified to the—the financing that we had to have committed for by the 31st of May.

Q. You are referring to the financing by the lending institutions for the Boeing program?

A. Correct.

Q. And you are saying, as I understand you, that any [fol. 6320] delay in the offering by TWA of debentures which would not produce any cash to TWA, but which would produce cash to the Tool Company would have an adverse effect on the lending institution?

A. Might have.

Q. And this would be by reason of the possibility that the Tool Company might be in a position to terminate the voting trust?

A. No, those are your words.

Q. Explain in what respects, if you please.

Mr. Sonnett: Explain what?

Q. In what respects would the financing of the Boeing program by the lending institutions be adversely affected because of a delay in the debenture offer by TWA, which was not going to produce any cash to TWA?

Mr. Sonnett: I think this has been answered twice already, but if this is the last time, I won't object to it. I think the witness twice covered the subject matter. What counsel is doing is arguing with the witness.

A. Mr. Davis, at this point we had informal assurances from the executives of the financial institutions that they would recommend to their committees participation in the financing to the extent required. There obviously was a

[fol. 6321] serious question in my mind as to whether any substantial delay or change in the program might have the effect of unhinging some of these informal commitments, and I was not going to take any chances of having the financing of the Boeings, even though the chances might be slight.

I talked with Mr. Brandi, and asked his opinion as to whether or not delaying the debenture offering might have an affect on our financing, and his opinion was yes, it might have a serious affect on it, and on the basis of that I wasn't going to take the chance of having this financing abort, and lose either the program or the down payment of $850,000.

Q Now, Mr. Tillinghast, let us go to the meeting which you had in your office on the 12th of May. Do you recall you identified Mr. Rowe being there?

A. Yes.

Q. Mr. Leslie?

A. Yes.

Q. Yourself?

A. Yes.

Q. And who else?

A. Mr. Forrester, Mr. Hager, and one other person has come to mind—Mr. Joy, who is an assistant of Mr. Reed.

[fol. 6322] Q. Prior to that meeting you had a conversation with Mr. Brandi of Dillon, Reed?

A. That's correct.

Q. And that was a conversation you had with him over the telephone?

A. That was a conversation in my office.

Q. Prior to the meeting when these other gentlemen arrived?

A. Which other gentlemen?

Q. Mr. Forrester, Mr. Carl Rowe, and these others.

A. It was prior to the arrival of Mr. Forrester and Mr. Hager, but as I recall it, after the arrival of Mr. Rowe and Mr. Reed and Mr. Joy, and Mr. Leslie.

Q. In other words, Mr. Brandi joined you at your offices on May 12th?

A. That's correct.

Q. Before Mr. Forrester and his attorney showed up?

A. Correct.

Q. And you were gathering there ahead of time to discuss that position you would take with Mr. Forrester?

A. Correct.

Q. That was based upon the report made to you by Mr. Leslie the day before?

A. In part based on that.

[fol. 6323] Q. You had not talked with Forrester between times, had you?

A. No.

Q. Before Mr. Forrester's lawyer arrived, will you describe the substance of what took place insofar as it lates to the subject under discussion, namely, the position of TWA with respect to Mr. Forrester's anticipated request?

A. Yes. We discussed the subject with Mr. Brandi, and said that we were presented with this request, and we would like his views on the position that we should take. I said that I was particularly concerned with one thing, and that is that this we had this big program, and to me a very important program in midstream. I wanted to assure myself that nothing that was done in this regard might in any way prejudice the consummation of our financing with the financial institutions.

I said my own limited experience in the securities field made it seem to me a little unrealistic about effecting all of the things that would have to be affected within a week's time. I said even under the best of circumstances, with somebody who had a greater reputation than Mr. Hughes for being easy to negotiate with, I thought this was a tremendously ambitious schedule, and that I personally [fol. 6324] doubted it could be effected within that period of time.

I said, "I would like your views as to whether this might have any effect on the financing or not."

He said that he felt that it might have a serious effect on the financing. The financial institutions were willing to make the commitments they had made on the assumption that TWA had achieved a degree of independence, and was free to proceed with programs that it considered to be in the best interest of the company, and that if you got into

a situation that dragged on and got bogged down in a controversy of one sort or another, he felt no assurance at all that you could count on the financing continuing to be available, and that his very strong recommendation would be that we not postpone the financing, but go ahead—

Q. You are referring to which financing?

A. The subordinate debenture financing—but go ahead on our predetermined time schedule, and if there was a genuine secondary offering in the wind, that could be handled as such.

Q. Let us take this piecemeal. Prior to this gathering in your office, to your knowledge had anyone told Mr. Brandi what the meeting was about?

[fol. 6325] A. I believe Mr. Leslie had talked with him.

Q. Mr. Leslie was fully familiar with the nature and details of Mr. Forrester's request?

A. He was the most familiar one, yes. He had talked with Mr. Forrester.

Q. Wasn't the purpose of the meeting to find out from Mr. Forrester what it is exactly that they proposed to do?

A. The purpose of the meeting was for him to explain in as much detail as he cared to exactly what they proposed to do, and to obtain TWA's agreement to a postponement.

Q. Isn't it fair to say that all Mr. Forrester told Mr. Leslie up to that point was that he had been approached by the Tool Company to see if they would undertake some sort of secondary, and that Mr. Forrester would like to sit down with you, or whoever, and discuss a program?

A. No, I am sure that isn't the case, because I am quite sure that when this first was mentioned to me, the matter of the delay was in the conversation already.

Q. But my question is whether or not it is your testimony that Mr. Forrester discussed in detail what he proposed with Mr. Leslie on the 11th.

[fol. 6326] A. My impression is that most of what had been discussed—most of what was discussed in my presence on the 12th, already had been discussed with Mr. Leslie.

Q. And it is your understanding that you asked Mr. Leslie to call Mr. Brandi to arrange this meeting, and tell him what it is that Merrill Lynch wanted to do?

A. It is my recollection that I asked Mr. Leslie to get in touch with Dillon, Reed, explain the nature of the request, and get their views as to what effect, if any, it would have on the new financing.

Q. And he is the one who arranged for Mr. Brandi meeting at your office the next day, the 12th?

A. I believe so.

Q. You made this suggestion to Mr. Leslie without having heard from Mr. Breech?

A. That is my best recollection. As I recall it at the moment, the first time I talked with Mr. Breech was after I talked with Mr. Forrester.

Q. These gentlemen met in your office before Mr. Forrester and his lawyer arrived?

A. Correct.

Q. At that time there took place the conversation that you described a moment ago?

A. That's correct.

[fol. 6327] Q. Without having heard what Mr. Forrester and his lawyer had to say?

A. No.

Q. Somebody must have described what Mr. Forrester and his lawyer were proposing. Who did that? Did Mr. Leslie, did you?

A. Mr. Forrester outlined—

Q. I am talking about before Mr. Forrester arrived.

A. Before Mr. Forrester arrived—excuse me, I misunderstood you. Mr. Leslie, in the prior conversation, I believe, outlined what was proposed.

Q. To Mr. Brandi and Mr. Rowe and Mr. Joy, Mr. Reed's associate or partner. Is Mr. Joy a partner of the firm of Hughes, Hubbard?

A. I don't think so, no. I think he is an associate.

Q. At that time, as I understand your prior testimony—but I want you to change it if it is not accurate—Mr. Brandi in effect confirmed your views, or confirmed the view that the lending institutions that made advances to TWA on the assumption that TWA would maintain a certain degree of independence, I believe you said—

A. That's right.

Q. And if there was anything which might take place to jeopardize that degree of independence, it might have an [fol. 6328] adverse affect on the Boeing financing?

A. What he said, as I recall it, was that if this degenerated into another Hughes controversy, and it appeared that the company had not achieved the ability to deal objectively with its problems, that it might have a serious effect on the financing.

Q. Mr. Sessel was not there?

A. Mr. Sessel was not there.

Q. So far as you know, how and when was Mr. Sessel first informed about this approach by Merrill Lynch?

A. I can't say. It would have been by Mr. Leslie or myself. Which it was and exactly when it was, I can't recall.

Q. You believe you may have been the one?

A. Possibly. I think it is more likely that it was Mr. Leslie, but it conceivably could have been I.

Q. Before Mr. Forrester and his lawyer arrived, did you or Mr. Leslie, or anyone else at that meeting, suggest that this move by the Hughes Tool Company might be part of a plan to refund or refinance or terminate the voting trust?

A. I don't recall any such discussion, Mr. Davis.

Q. Do you think you would recall it if it had taken place? [fol. 6329] A. I think I probably would, but I just don't recall it at this time.

Q. Do you recall with clarity what concepts Mr. Brandi was expressing in suggesting that this discussion by Merrill Lynch might interfere with the Boeing financing?

A. I think I have already testified as fully as I can about that.

Q. You are satisfied that is as full and as clear a description as you are capable of giving us?

A. At this time, yes.

Q. Do you think there is anything you might do to help you refresh your recollection?

A. Not that I can think of, no. If I re-discussed it with everyone present, it undoubtedly would refresh my recollection somewhat, but as I sit here now, that is the best recollection I can give you.

Q. Did this group arrive at some consensus of opinion? Did anyone express a different point of view in that group?

A. No, I think I summed up the meeting by saying that I wasn't prepared to take any reasonable risk of unseating the Boeing financing, and that unless people could give me assurances that that wouldn't happen, that it was going to be my position that we deny the request.

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[fol. 6372] Q. Do you recall what Mr. Breech said and what you said to him?

A. I recall this much. I recall that I went through an explanation of the request, the discussion with Brandi, the meeting with Forrester, summarizing what was said in those discussions. I said I felt very strongly that it would be a mistake to get started on a program that very likely would lead from postponement to postponement.

Q. You told him that?

A. I did. That my own experience told me that it was very unrealistic to expect to do something like this within a week's time, and that if we granted a week's delay, that I was morally certain that we would at the end of the week be faced with the question of a further delay. And I felt that we ought to deny the request but I didn't want to do so without discussing it with him and getting his concurrence.

If I recall what he said, he said, "Charlie, this is one that neither you nor I should decide. We better put this before the whole board."

Q. When you said to him that based on your own experience a week was not sufficiently long, what experience were you referring to?

A. Such limited experience as I had had with registration [fol. 6373] statements.

Q. You had had experience with registration statements?

A. Limited experience, yes.

Q. Was it your understanding at that time that the same registration statement that had been prepared by TWA would be used?

A. With such modifications as were necessitated by bringing in a new party.

Q. Did you understand why Merrill Lynch wanted a week's time?

A. I know what they said.

Q. What did they say?

A. They said they wanted a week's time in order to permit them to put together an underwriting syndicate, and to make the necessary changes in the registration statement in order to effect a public offering.

Q. Were you familiar with putting together an underwriting syndicate?

A. Not directly.

Q. Indirectly?

A. I guess limited.

Q. Would you describe your experience in putting together an underwriting syndicate?

[fol. 6374] A. It is hearsay, Mr. Davis. I never actually engaged directly in putting one together. I have been on the fringes enough to have some idea.

Q. Describe as well as you can what indirect experience you have had in putting together an underwriting syndicate?

A. I was quite active in the distribution by General Motors of the Bendix stock which General Motors sold, as I recall it, in the first part of 1947. During the time I was at Hughes, Hubbard, there were a good many offerings around the office that I didn't directly participate in, but got some impressions about.

In 1950 something or other—I don't remember when—I represented the underwriters in an offering of the stock of the Edo Corporation, and was active in that.

I know enough about it—I don't represent myself as an expert in this field. I know you have to have underwriting agreements, and you have to give information to the underwriters on the company, and you have to give an opportunity to the underwriters that are interested to investigate the company. You have to have meetings.

Q. Isn't it true that all that work, the investigation of the company, material to be disclosed to the public—all [fol. 6375] that work had been done by Dillon, Read and the Chadbourne firm, for the public offering by TWA, had it not?

A. A certain amount of that had been done.

Q. Merely a certain amount of it?

A. May I finish?

Q. Yes, certainly. I was quite aware of the fact that if you brought in new underwriters, the discharge of their responsibility would require them to make at least a casual investigation of the company. I can't believe that a firm of the standing of Merrill Lynch would make an offering without taking some steps to familiarize themselves with the company, the company's future, the company's problems. They would bring in new counsel who would have to go over the registration statement, educate himself sufficiently to be in a position to pass the registration statement on behalf of his client.

It would bring in Hughes Tool Company as an active party, and Hughes Tool Company, as it turned out on the 17th, had many serious questions about the adequacy of the registration statement.

By the time that you had gotten a new set of counsel in for the underwriters, by the time you had gotten Hughes [fol. 6376] Tool Company counsel in, no one in this world could convince me there was a reasonable prospect of getting that offering off the boards and ready to go public in a week's time.

Indeed, I said as much to Mr. Forrester, and particularly to Mr. Hager, his counsel, and Mr. Hager, in substance agreed with me, and I said, "What sort of a guarantee can you gentlemen give me that this can be accomplished within a week's time?"

They said, in substance, "Obviously we can't give you any guarantee. All we can say is we will do our best."

[fol. 6377] Q. When you refer to a week's time, you are not quite accurate, are you? We are talking about a request made on May 11th. They were seeking a week's adjournment from the contemplated May 17th, so it was two weeks' time, wasn't it?

A. No, it wasn't two weeks' time. I was talking with them on the 12th of May, which was a Friday, and the proposal was to become effective on the 24th, which was 12 days later.

Q. 12 business days?

A. No, not 12 business days.

Q. 12 days?

A. 12 days including Saturday and Sunday.

Q. Do you think that is closer to two weeks, or one week?

A. That is 12 days. I will say, Mr. Davis, unless there be any confusion on the subject, that what I say is to the impossibility of accomplishing this, in my opinion, applies equally to 12 days as it does to one week.

Q. Will you admit that you have had no experience really, or you don't consider yourself to be an expert as to how long it takes to get together an underwriting group, leaving aside for the moment—

[fol. 6378] Mr. Sonnett: I object to that as to form. It is argumentative. The witness has fully described his experience.

The Special Master: I think he already said he isn't an expert.

By Mr. Davis:

Q. In connection with this request to Merrill Lynch, you were not concerned with the problems that Merrill Lynch might encounter in achieving their objective, were you? I will withdraw the question.

Did you consider Merrill Lynch was being adequately advised by experienced people, legal people, so that they fully understood what they were proposing to do? Were you satisfied about that?

A. Yes.

Q. Did Merrill Lynch say to you that they thought that they could put together an underwriting group if TWA, or its management, would delay the effective date of their registration statement from the 17th to the 24th? Did they say that to you?

A. They might well have.

Q. Did they or didn't they, Mr. Tillinghast?

A. I wouldn't put it exactly that way, but let me say this, that there was no real question in my mind as to their ability [fol. 6379] to get together an underwriting group. That wasn't the problem. The problem was the problem of becoming effective.

Q. You mean how much longer it would take to become effective if they got together an underwriting group?

A. That's correct. The problem that I was interested in, Mr. Davis, was not how long it took them to get together an underwriting group. I was concerned with the question of if we granted this delay, when we would become effective.

Q. And you thought that if they formed an underwriting group, it might delay beyond the 24th the effective date of the registration statement?

A. I felt if we tried to go to an underwriting on this, that the probability was that it would delay it far beyond the 24th.

Q. Did you try to make an estimate as to how much of a delay you thought would occur?

A. I thought that under the best of circumstances, that you were talking about, roughly, a month.

Q. Did anyone tell you that?

A. I discussed that with our own counsel. I discussed it—

Q. How do you mean by your own counsel?

[fol. 6380] A. Mr. Rowe. I discussed it with Mr. Brandi. I discussed it with Mr. Forrester and Mr. Hager, and expressed that viewpoint.

Q. This was on the 12th?

A. On the 12th. None of the experts in this field seriously disputed that expression of viewpoint by me.

Q. In other words, you are saying now that on the 12th of May, Mr. Forrester and Mr. Hager, of Sherman Sterling, agreed with the views which you expressed out loud, that it would take an additional month in order to become effective?

A. Let me say, Mr. Davis, to be more accurate, that they did not disagree with that expression of viewpoint by me.

Q. You assumed from that they were in accord with your point of view?

A. I did. As I said before, Mr. Davis, they repeated—Mr. Forrester repeated they would do their best. They were hopeful that they might succeed in doing it, but certainly couldn't assure us that it was possible.

Q. Was it as a result of this meeting that a group was formed, included Mr. Reed, who was at that meeting, wasn't he?

A. He was.

[fol. 6381] Q. Mr. Reed and Mr. Hager of Sherman, Sterling, to get up a lot of papers from the Tool Company, requesting the Tool Company to give a firm letter of commitment to Merrill Lynch, preparing resolutions, and they worked an entire weekend over it? You were aware of that, weren't you?

A. I was. I believe it was after the meeting that someone said would we be willing to have the lawyers work over the weekend in order to make such progress as they could, so that if the decision was an affirmative one, no time would be lost.

I authorized them to go ahead and start working.

Q. In fact the Hughes, Hubbard firm sent bills to TWA and others with respect to the work that was done to get the Tool Company committed to Merrill Lynch, following this meeting on the 12th?

A. I wouldn't say worked to get the Tool Company committed to Merrill Lynch, but they did work over this weekend, and I believe—

Q. Doing what—do you know?

A. Working on an underwriting agreement, and they worked on a letter of commitment that the Tool Company would give. Just what else they worked on, I don't know.

[fol. 6382] Q. Do you recall a discussion about trying to get the Tool Company to agree to guarantee one year's interest on these debentures?

A. Yes, I do. That came up on the 12th. Mr. Forrester said at that time that one of the problems that they had run into was that it very likely would be necessary for someone to guarantee the interest for a year, in order to make these publicly favorable.

Q. The meeting on the 12th, with Mr. Forrester and the others there, broke up on the basis of all this work to be done, these problems to be solved, get the Tool Company to consider guaranteeing a year's interest, an underwriting agreement to be worked on—that was what everybody started to do upon the break-up of this meeting?

A. No, it was not. If I recall correctly, that did not come up at the meeting. It came up after the meeting, and I got a telephone call, I believe from Mr. Reed, saying that they wanted to go ahead so that there wouldn't be any waste of

time, and I told him in effect that so long as it doesn't involve expense on the part of TWA, and as long as it is clearly understood what my position is in the thing, go ahead and extend every cooperation, and see what progress you can make.

[fol. 6383] Q. Did Hughes, Hubbard in fact send a bill to TWA for the legal work that they did during that period?

A. I think they sent one to the Tool Company, didn't they?

Q. I know they did, but I am asking you if they also sent one to TWA.

A. Not for the word. I think this was all paid for by the Tool Company, Mr. Davis.

Q. And it is your understanding that following that meeting, they worked on a proposed underwriting agreement between the Tool Company and Merrill Lynch?

A. Yes.

Q. Do you recall saying that before anything else would happen, you would want to see a firm letter of commitment from the Tool Company to Merrill Lynch?

A. Offhand I don't, no.

Q. Have you ever heard that Merrill Lynch was ever asked to obtain from the Tool Company a firm irrevocable letter of commitment?

A. Not that I recall, Mr. Davis. I remember that there was some sort of a commitment letter, and there was question as to the adequacy of the commitment letter, but I don't recall that TWA asked for that. As I recall it, it was volunteered by the Tool Company.

[fol. 6384] Q. Without drawing a distinction who TWA is, do you know of any individual, whatever association he may have with anyone, who asked Merrill Lynch to obtain such a firm letter of commitment from the Tool Company?

A. Not offhand, Mr. Davis. I don't recall it at this point.

Q. Is it still your testimony that on May 12th, at this meeting you indicated, and it was your personal opinion, that the whole thing was absolutely impossible, and it was just a waste of time?

A. That's correct.

Q. And it is your testimony that you believed that Mr. Forrester and Mr. Hager understood that point of view, and did not disagree with it?

A. Yes, although I would have to say in fairness that they obviously wanted to go ahead with this thing, and let us say with viewing it in the most optimistic light from that standpoint. I specifically put the question to them as to whether or not they could give me any assurance that this would be completed in the time suggested, and the answer was no, they couldn't.

Q. Was there any discussion at that meeting as to what the Tool Company would do with all that money, with all that cash?

[fol. 6385] A. No, there was not, at least I am sure there was no question as to what the Tool Company would do with that money.

Q. Then you called Mr. Breech and expressed your own personal view that this request of the Tool Company was not feasible, is that correct?

A. That's right.

Q. What else do you remember telling Mr. Breech?

A. I have already testified—

Q. Excuse me for interrupting you. Did Mr. Breech express any personal views based upon his experience as to whether or not this would be feasible or not?

A. Not that I recall. He certainly didn't disagree with what I said. I don't recall at this moment his having expressed any independent opinion on the feasibility of it or not.

Q. Would you say that Mr. Breech had had more experience than you as to the problems of feasibility of forming an underwriting group, or the length of time it takes to carry out that kind of a project?

A. I would think he had had considerably less experience than I.

Q. In that telephone conversation, would you say you did most of the talking or did Mr. Breech do a substantial [fol. 6386] amount of the talking?

A. I am not sure those are alternatives. I did most of the talking, and Mr. Breech did a substantial amount of talking.

Q. Did you tell Mr. Breech what Mr. Leslie had discussed with you on May 11th?

A. If I did, I don't recall it at this moment. I don't think so.

Q. Mr. Tillinghast, isn't it true that at that time at least there was a great deal of interest on your part as to what the Tool Company was trying to do? Are you saying that you did not discuss that, or express some views or report to Mr. Breech along those lines?

A. No, I am not saying that, Mr. Davis. I certainly was concerned very much with whether or not this request was genuine, or whether it was a maneuver.

Q. What kind of a maneuver?

A. A delaying maneuver.

Q. For what purpose?

A. For the purpose of upsetting the Boeing financing.

Q. Not for the purpose of raising $100 million?

A. Not for the purpose of raising $100 million.

Q. Not because of any concern because without that money the voting trust might terminate?

[fol. 6387] A. That's correct.

Q. And that is what you told Mr. Breech?

A. I told Mr. Breech that I was very concerned that this was a delaying tactic, that if we become involved in this, that questions would arise, that the thing would go from delay to delay, and we would find ourselves up against a deadline without our subordinate debenture financing complete.

Q. Did Mr. Breech give you any reasons why he thought this was a matter that should be acted upon by the board?

A. I don't remember any specific reasons, but it was of an obvious importance that one might well take that point of view, and indeed I didn't disagree with it.

Q. At this point, Mr. Tillinghast, I am more interested in what Mr. Breech actually said, than your reasoning. I know you have many justifications for what took place. I am interested in what happened.

A. As best as I can recall it at this time, Mr. Davis, what happened was that Mr. Breech said that he thought this was something of a magnitude that neither he nor I nor the both of us together ought to decide it, and it ought to be decided by the board.

Q. Based upon a recommendation made by you, or to be [fol. 6388] made by you and him?

A. He didn't go into that, that I can recall.

Q. Did he indicate that he agreed with your reasoning and conclusions?

A. He certainly didn't disagree with them. My recollection, so far as I can recall it, Mr. Davis, is that he was generally in agreement with what I had to say, but didn't want to take the responsibility of deciding it.

Q. Mr. Tillinghast, there was a purpose in your calling Mr. Breech, wasn't there? Wasn't it for the purpose of gossiping?

A. No. The purpose of calling him was for the obvious purpose of acquainting him with this development, because I thought (1) that I should not handle it by myself.

Q. So you wanted his advice? You wanted him to help in making a decision, didn't you?

A. That's correct.

Q. I am trying to find out what Mr. Breech said to you that helped you to make a decision.

A. He didn't say anything to me to help me make a decision, other than that he and I should not make the decision, that it should be taken to the board.

Q. I believe you said that you expressed to Mr. Breech [fol. 6389] your views that this was part of a maneuver by the Tool Company to interfere with the Boeing program, is that correct?

A. That's correct.

Q. On that date on May 12th, what evidence had you had, what reasons did you have to believe that the Tool Company was interested or desired or wished to interfere with the Boeing purchase program?

A. Well, I really had none directly, Mr. Davis, because up until this particular time there had been no indication one way or the other as to what viewpoint the Tool Company would take on this matter. Based on my conversations with Mr. Leslie, and as I mentioned before, the fact that I didn't consider this a realistic proposal, a durable project, I was suspicious—I became suspicious as to whether or not this was a genuine proposal, or whether

it was a diversion. My suspicions undoubtedly were more readily aroused by such knowledge as I had of the delays and attempted delays and diversions that had taken place in connection with the 1960 financing, and the general reputation that Mr. Hughes had, as I understand it, of being one at the last minute to seek a delay, and to prevent things from coming to a conclusion.

[fol. 6390] This matter of the offering of the subordinate debentures had been something that had been on the fire for many months.

Q. Pursuant to an agreement with the Tool Company?

A. Pursuant to the agreement embodied in the 1960 financing.

Q. With the Tool Company?

A. With the Tool Company and others. Obviously one of the questions in my mind was the question of why had Hughes waited until the 11th hour to suggest something like this, if in fact it was a genuine proposal, and from what Mr. Leslie had said, from the lateness that this question had been raised, from what I had heard about Mr. Hughes' negotiating tactics, I was suspicious that this might not be genuine, and indeed, on the 17th when you appeared, my suspicions were richly fulfilled.

Q. Thank you, Mr. Tillinghast. At that time what was the market price of the TWA common stock?

A. I don't remember exactly. It was higher than it is now, as I recall it.

Q. Substantially so. Was it around 22?

A. No, it was 19 or 20, or somewhere in there.

Q. Had you had discussions with Dillon, Read, as to the probable offering price of these convertible debentures?

[fol. 6391] A. Yes. There had been discussions.

Q. What were the nature of those discussions, without the detail? I am interested in what they said to you with respect to the probable offering price.

A. Well, I am not sure that I had direct discussions with Dillon, Read at that point. I think most of my discussions were with Mr. Leslie. It was hoped—I have got to refresh my recollection and think about this.

Q. Would you like to take a short recess?

A. Let me finish this answer first. We were talking, I believe at that time half a point higher.

Q. Than what?

A. Than the price finally fixed, if I recall correctly, in the delay that took place, we lost half a point in the conversion price.

Q. You are referring to the period between May 17th and the day it actually became effective. I am talking about May 12th. What was the price you were discussing with Dillon, Read on or about May 12th, or prior to May 17th?

A. I think it was half a point higher than the conversion price ultimately fixed.

[fol. 6392] Q. And that was what figure?

A. It was 20½ and 21½.

Q. That was the conversion price?

A. Yes.

Q. What was the offering price of the debentures? Actually wasn't it an offering debenture with warrants?

A. Yes. There wasn't an offering price. It was an offering to the shareholders.

Q. Weren't the shareholders given an opportunity to subscribe to subordinated debentures?

A. Yes.

Q. With warrants?

A. With warrants attached.

Q. The warrants gave you the right to convert, or turn in the debenture for stock?

A. That's right.

Q. But the stockholders were going to be given the opportunity of buying a debenture?

A. Right.

Q. Was this financing something that you didn't pay any particular amount of attention to?

A. I wouldn't say I didn't pay any particular attention to. It was one of many, many things I was dealing with at the time, and it was something that had started in motion long before I got there. Mr. Leslie was carrying the [fol. 6393] responsibility on it. I was generally familiar with it, but I was not deeply involved in it.

Q. Would it be fair to say that you as chief executive officer of TWA wasn't paying too much attention to this whole program?

Mr. Sonnett: I think that is repetitive and argumentative. I object to it on that ground.

The Special Master: I think the witness' answer has shown how much attention he paid to it, unless you have something further.

Q. Can you tell us, Mr. Tillinghast, what this offering consisted of?

A. Yes. It consisted of $100 million of subordinate debentures.

Q. At what price?

A. At par.

Q. The offering price was going to be par, is that correct?

A. Par.

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[fol. 6425] The Special Master: I think at this point the parties are entitled to determine exactly what the witness said to the board of directors in regard to this matter so that we can have it in one place.

The Witness: I would merely have to repeat what I said before, which is that I discussed my discussions with Mr. Forrester, explained—

The Special Master: Can you describe in substance [fol. 6426] what you said, and anything that anybody else said, so that we can get something more than just discussions?

The Witness: Mr. Rankin, I am afraid that I would be somewhat misleading if I purported to be quoting what one person said and what another person said, because it is not that clear in my mind.

The only thing I can say is that as I recall it, I mentioned that I had met with Mr. Forrester and Mr. Rowe and Mr. Reed and Mr. Joy, and Mr. Hagarty, and Mr. Leslie, and that they had outlined their proposal. That I said to them that I was extremely doubtful that such a program was possible of accomplishment. That I did not think it was realistic, and from what limited experience I

had had in the securities field told me that it would be quite impossible to bring two new parties into a financing, and with a week's delay resolve all the problems that might arise in getting out a registration statement, and getting all the problems solved so that everyone was in agreement.

I said that I thought that the Boeing program and its accomplishment was of great importance to TWA, and that I was concerned as to whether this embarking on such [fol. 6427] a program as was suggested would lead to anything other than delays, and that I was afraid we might get into a situation where we missed our date of May 31st, which was the deadline for the offering of the subordinated debentures, and also the deadline for meeting the financing requirements of the Boeing program, and I thought it would be a great mistake to run any risk in trying to do what seemed to me very unlikely of accomplishment—any risk of interfering with our settling of the financing of the Boeing deal.

I said that I had told Mr. Forrester very frankly that that was my point of view. That none of the people present had been willing to give me or express any opinion. That one could with assurance accomplish this within the postponement requested, and in my mind, it would be an unwise thing for TWA to do.

Q. And that, you feel, was the complete statement of what you reported to the board?

A. As far as I can recall it today.

Q. Following the minutes which read "He also read to the directors a letter from Dillon, Read & Co. concerning the effect of a delay in the offering of the debentures." [fol. 6428] That is Defendants' Exhibit 24?

A. That is right.

Q. You read that in its entirety—this letter?

A. I believe that was read in its entirety. I should have added to my testimony that I said that I had felt that I should consult with Dillon, Read as to the possible effect on our financing, and obtain their opinion as to whether or not the fears I had were substantial, or were groundless, and at my request they prepared a letter summarizing their views.

Q. At that point do you recall any of the directors asking questions or for explanations, either based upon the Dillon, Read letter, or the statement that you had made? Did everybody remain quiet?

A. No. I am sure there was a discussion. I believe I recall Mr. Lack entering into the discussion.

Q. Do you recall what he said?

A. I don't have any recollection of anyone having quarreled with the position or seriously questioned the position I took on the matter of delay.

Q. Would you say that the directors there predicated acquiescence in what you said?

A. Yes. The attitude was one of general agreement.

Q. And then, referring to the minutes, Mr. Tillinghast [fol. 6429] then read also to the meeting a letter dated May 16, 1961, from Merrill Lynch Pierce Fenner & Smith outlining the proposal for their underwriting, the interest of Hughes Tool Company in the proposed offering of subordinate debentures.

Did you do that?

A. Yes.

Q. That was the letter you had received the previous day, which had these attachments?

A. That is correct.

Q. Did you read the entire letter to the board?

A. I read the letter. I don't believe I read all the attachments.

Q. Then Mr. Breech made some comments—turn to page 3. The next paragraph refers to the recommendation you made, which I assume you have described, isn't that right?

A. Yes.

Q. Then Mr. Breech commented on the lateness of the proposal by Hughes Tool Company, and suggested the alternative or secondary offering of the debentures by the Hughes Tool Company, and offered the cooperation of the corporation in such an offering. Do you remember that? [fol. 6430] A. Yes.

Q. Did Mr. Breech comment at some length on his views?

A. I don't think I can add anything to what I have already testified.

Q. I am trying to understand to what extent Mr. Breech made any comments?

A. I already testified to that.

Q. Were they lengthy comments?

A. No, I don't think they were lengthy.

Q. They were brief?

A. They were relatively brief.

Q. Did he in effect say "I agree with Mr. Tillinghast, and I don't think we ought to grant this request of the Tool Company"?

A. I don't recall his having said specifically "I agree with Mr. Tillinghast."

My recollection is rather he sort of picked up where I left off, and said "After all, Mr. Hughes has had months to decide to do this if he wanted to. This thing has been pending for quite a period of time, and I think that he can, if he is sincerely interested in a distribution of his interest, that he can do it by means of a secondary offering, and it is not necessary to postpone TWA's offering for that [fol. 6431] purpose."

Q. You referred to Mr. Lach who had formerly been counsel for the Hughes Tool Company?

A. Yes.

Q. Do you recall if he made any remarks based upon his prior experience with the Tool Company or Mr. Hughes?

A. My recollection is that he said this was a fairly typical Hughes maneuver.

Q. What maneuver was he talking about? Did he indicate to the board the maneuver involved?

A. I don't recall he elaborated it.

Q. But everybody understood it?

A. Everybody understood what he meant.

Q. And then you will note at 10 o'clock Mr. Davis was invited to attend the meeting?

A. Yes.

Q. All you described took place between 9:39 and 10 o'clock?

A. That is right.

. . . . . .

[fol. 6510] Q. Now will you please tell me what the discussion was that took place, and what was said to the directors there present relating to the action to be taken on the request of Merrill Lynch for an extension of time?

A. My recollection is that after you had left, and after the situation had been summarized by Mr. Reed, someone made a motion, I think myself, that the request of Merrill Lynch Pierce Fenner & Smith be respectfully denied, and that we express our readiness to cooperate in every way in a secondary offer.

Q. Therefore at that time there was no further discussion of the merits or lack of merits of the request?

A. As I recall it, there was some more discussion and some more comment on the thing, all of which, as I recall it, were to the point that it didn't seem to be of any interest to TWA to grant this request.

Q. Do you recall who made what comments? Did you make some further comments?

A. I don't at this point remember any specific comments, but I am quite sure there were some, Mr. Davis.

Q. Isn't it a fair statement, Mr. Tillinghast, that the [fol. 6511] deliberations, or to the extent to which there were deliberations, as to this decision to be made by the board at that meeting, took place between 9:30 and 10 o'clock, and that after my presentation it was really a matter of a formality of someone making a motion and denying the request?

A. The burden of the discussion certainly took place before. I think, Mr. Davis, that it would be only fair to say that your appearance there, and the things that you said, did a great deal, I think, to solidify the opinion of the directors that this request ought not be granted.

Q. Can you identify the things that were said during the 45 minutes that I was at the meeting, which you have characterized as solidifying the conclusion or the feelings of the board?

A. Yes, Mr. Davis. I don't know to what extent you want me to go through the whole discussion, as I recall it.

Q. Just answer the question, if you can.

Mr. Davis: Will you read the question back to the witness?

(The question was read.)

A. Yes, Mr. Davis. You stated in effect several times [fol. 6512] that unless TWA was prepared to acquiesce in the request of Merrill Lynch in this event as a business matter, your client was prepared to waive the objections of Hughes Tool to our registration statement. That you proposed to oppose the effectiveness of the registration on the ground that the registration statement was incomplete and improper, and you went through quite a list of specific matters with which you took issue.

Q. Isn't it a fact, Mr. Tillinghast, that a portion of that 45 minutes was devoted to my explaining that the Tool Company was confronted with the necessity of either stating its position with respect to the 990 program, and other related matters, and that if a registration statement went to the public, particularly if it was to be used in connection with a secondary offering, in fact, the Hughes Tool Company would have lost the right to thereafter assert any claims in that regard? Isn't that the substance of what took place?

A. That is not entirely correct, because I do not recall, and do not think that you said anything about if it is to be used in connection with a secondary offering.

Q. The purpose was to urge the directors to give favorable consideration to the request of Merrill Lynch, was it [fol. 6513] not?

A. That is right. What I understood you to say was that if we were prepared to give favorable consideration to Merrill Lynch, you would forget about the inadequacies of the registration statement, and that was a business decision your client was proposing to make, but if we weren't prepared to do that you had no choice but to bring to the attention of the Securities and Exchange Commission, what you considered to be a number of inadequacies in the registration statement.

Q. Do you recall what those inadequacies were that were presented by me at that meeting?

A. I remember some of them. You are quite correct in stating that you said initially that Hughes Tool Company was faced with a problem, that if it maintained silence it might be deemed to have waived or acquiesced in certain things, and then you went on, as best I can recall at this time, to say that you felt that the registration statement was deficient in not pointing out the voting trust might be terminated, otherwise in accordance with its terms, and you were presently studying, and not in a position yet to give an opinion as to its invalidity of the voting trust as a consequence of certain circumstances of its creation.

[fol. 6514] You talked about my employment contract. I think you said that you thought that the registration statement was deficient in not having pointed out facts relative to prior connections that I may have had with the financial institutions.

You talked about the 990s, and said the registration statement was deficient in its failure to contain a statement as to whether or not we proposed to claim that we were entitled to the 990s, and you also said, if I recall correctly, that it was deficient in failing to state whether there was any obligation on the part of TWA to take the 990s, and you said you were studying that question, and hadn't yet formed an opinion.

You also talked about the fact that maybe Hughes Tool Company would be considered an underwriter. I believe you also stated that you felt that the registration statement should say something about the financial institutions being controlling persons.

At the moment that is as much as I can recall of the specific objections you mentioned.

[fol. 6515] Q. And those are the remarks which solidified the opinion or conclusion of the board, is that correct?

A. No, Mr. Davis, it wasn't those particular remarks so much as I think it was the remarks that preceded them, when you appeared at the meeting and said that there were two subjects that you wanted to talk about. One was the matter of the Merrill Lynch proposal, and the other was another matter which you were not at liberty to disclose

until the first matter had been disposed of. That you had given a commitment to Merrill Lynch that you wouldn't raise the second question until the first one had been dealt with.

As I recall it, you talked in that vein for a couple of minutes, and I believe both Mr. Slack and I separately said "Why don't you come to the point and tell us what it is. You assume to be threatening us with something. Now, let us get it out on the table."

At that point my recollection is that after having said again you had told Merrill Lynch that you wouldn't get into this second matter until the first matter was disposed of, you said, "Well, all right, here is what the problem is."

I got the impression, as indeed I think did most of the other people there, and this became clearer as you left, [fol. 6516] that we were being threatened with the fact that either we went along with the Merrill Lynch proposal, or you were going to raise trouble with our registration.

Q. To see if I can sharpen your recollection a little, Mr. Tillinghast—as you have testified, when I came in I indicated that there were two matters I wished to discuss?

A. That's correct.

Q. The first one was whether or not the Merrill Lynch request for an extension of time was to be granted or not?

A. That's correct.

Q. And I inquired whether or not a decision had yet been made?

A. That's correct.

Q. Do you recall the answer that was given as to whether a decision had yet been made?

A. The answer was given that a decision had not yet been made.

Q. That's right. Then I in effect said that that created a problem to me?

A. You continue.

Q. Do you recall my advising the board that the Tool Company had committed itself to Merrill Lynch to proceed [fol. 6517] with a secondary offering, and had furnished Merrill Lynch with a document to that effect?

A. Yes.

Q. And if the Merrill Lynch request was granted, the Tool Company was prepared to waive asserting certain claims which it felt it had, or possibly might have in connection with the matters you have described—the voting trust, et cetera?

A. My recollection with respect to this latter part is that you did not get to the point of stating the dilemma of Hughes Tool Company, and their willingness to waive their objections to the registration statement, until after you had talked for some time with respect to the proposed underwriting, and had at least twice stated that you couldn't deal with the second matter until the first one had been disposed of, because you had assured Merrill Lynch that you would not do so.

Q. And the second matter being the objections which the Tool Company had to the registration statement?

A. That's right.

Q. And that the nature of those objections of the Tool Company would obviously be affected by whether or not it was going to participate in the secondary offering?

[fol. 6518] A. That's correct.

Q. I recall prior testimony to be that in your telephone conversation with Mr. Breech, Mr. Breech in substance indicated to you that this request of Merrill Lynch was a matter which should be decided by the board, and not by you or by him, is that correct?

A. That's correct.

Q. This was the board meeting at which the decision was to be made?

A. That's correct.

Q. There had been no decision made on the day before?

A. There had been no decision made the day before.

Q. And in that half hour between 9:30 and 10:00, before I appeared in the room, is when there was that discussion?

A. That's correct.

Q. That is, after taking care of the preliminary formalities of the meeting, and the description of the offering?

A. Yes.

Q. Are you satisfied that you have fully and completely and adequately described the nature of the discussion and consideration that was given by these directors, particularly

[fol. 6519] the outside directors, with respect to this request of the Tool Company?

A. As far as I can specifically recollect, Mr. Davis, as developed earlier in the day, we had the day before, in the late afternoon, a meeting of the Audit and Compensation Committee, to deal with the matter of granting options under the stock option plan. I would be surprised with that many directors present if there weren't some discussion of it at that time.

However, I have no specific recollection of any discussion of it at the meeting, and I mention this merely to say that I think the directors who were there very likely got some of the background on the thing before the meeting the next day. So far as any decision being made, I am quite sure that there was none.

* * * * * * *

[fol. 6654] By Mr. Davis:

Q. Mr. Tillinghast, resuming to the events that you were describing, which occurred at the meeting of the board of directors of TWA on May 17, 1961, it is a fact, is it not, that the Securities and Exchange Commission failed to accelerate the price amendment which was filed on that date with the Securities and Exchange Commission?

A. That is correct.

Q. And it is correct, is it not, that subsequent to that date, TWA filed further amendments to its registration statements, other than the price amendment?

A. That is correct.

Q. And it is correct, also, that those additional changes or amendments to the registration statement of TWA were made as a result of conferences between TWA or its counsel and the staff of the Securities and Exchange Commission?

A. Certainly in part at least, Mr. Davis. I could not [fol. 6655] state at this moment whether all of them resulted from that, but that was true of the main body of them.

Q. Isn't it correct that one of the amendments that was made as a result of these conferences with the staff of the Securities and Exchange Commission was the disclosure of

additional facts with respect to the position of certain lending institutions, in relationship to the control or management of TWA?

A. Mr. Davis, the only thing that I particularly recall at the moment is that there were rather copious quotations from a letter that you had written, which were embodied in the final prospectus. I believe there were also some related changes in the prospectus, but they don't come immediately to mind.

Q. It is a fact, is it not, that TWA, through its representatives, insisted upon, or requested a hearing before the Commission, itself, with respect to the price amendment, or the acceleration of the price amendment? You were aware of that, weren't you?

A. Mr. Davis, it is not clear in my mind who asked for the hearing before the Commission. I know there was a hearing before the Commission, but I am not sure at this point whether we asked for it or you asked for it.

[fol. 6656] Q. As I understand, at that time TWA and its management, and you in particular, felt that it was of extreme importance to TWA to have this registration become effective as soon as possible. That is correct, isn't it?

A. That is true.

Q. And you do understand that there was an oral presentation made to the Commission itself?

A. I do.

Q. Do you know on what day that was?

A. I hesitate to be positive about that. My recollection is that there were a couple of appearances before the Commission.

Q. Isn't it a fact it was on the 18th?

A. I was going to say if I had to guess, I would say the first one was on the 18th, and there was one subsequently, a week or so later, on the 24th or 25th.

Q. When the registration statement was eventually permitted to become effective by the Securities and Exchange Commission?

A. That is correct.

Q. I am referring to the first one, which was on either the 18th or the 19th—is that your recollection or do you have a recollection it was on the 18th?

[fol. 6657] A. I wouldn't be positive about that. I think it was probably on the 18th, but I have no way of specifically ascertaining that.

Q. But you do know that as a result of this oral presentation before the Commission, the Commission refused to accelerate the price amendment filed by TWA?

A. That is correct.

Q. And it is also your information that the Commission requested the Tool Company, through its counsel, to submit within 24 hours a letter setting forth, or confirming what had been stated to the Commission orally?

A. That is correct.

Q. Let me refer you to Defendants' Exhibit 12, and ask you if you can identify that as being in fact the letter which was addressed to TWA, and the Securities and Exchange Commission under date of May 19, 1961, which was sent by the Tool Company or its counsel at the request of the Securities and Exchange Commission?

A. Mr. Davis, without checking every page of it, that appears to be the letter, yes.

Q. In the course of your deposition, you identified a number of documents and letters as reflecting, as I understood your testimony, what you considered to be part of malicious and wilful interference, or some other kind of [fol. 6658] inteference, by the Tool Company or its agents and representatives in the affairs of TWA. Do you recall your testimony in that regard?

A. Yes, I do.

Q. Do you identify this same letter, Defendants' Exhibit 12, as one of the communications that you considered and regarded as part of that interference?

A. Mr. Davis, I can't recall. The record will show whether I did, in fact, so identify it. If you are asking me the question now, I will say yes, I would identify it now as such a document.

Q. Will you please explain in what respects you regard this letter of May 19, 1961 as a wilful or other kind of interference by the Tool Company in the affairs of TWA?

Mr. Sonnett: I think the question is argumentative. He wants the witness to argue as to what the document says,

and as to what construction he puts upon it. I think if he wants argument, that should be for counsel.

The Special Master: I think he may answer.

A. I feel as I do, Mr. Davis, because of the fact that it was made, I thought quite clear by yourself, that this letter was written for the purpose of interfering with the [fol. 6659] plans and programs of TWA. You told us at the directors meeting on the 17th that unless we were prepared to cooperate in a program that you wanted to put forward, in which event you would overlook these alleged deficiencies, that you would take steps to assert these things that are embodied in that letter.

The purpose for which it was written, in my opinion, was for the purpose of interfering with the running of the business of TWA by its management, as it thought it ought to be run, and to have it run in favor of the special and private interests of a specific stockholder.

Q. So that your recollection may be clear, Mr. Tillinghast, let me refer you to page 666 of your deposition.

Mr. Sonnett: Are you going to read from the record? If so, I will accept your reading of it.

Mr. Davis: Yes.

By Mr. Davis:

Q. (continuing) The question was following some others:

"Q. That is one letter that you had in mind as being an interference with TWA—

[fol. 6660] "A. To the extent that it was part of an overall plan to interfere with the purchase of Boeing aircraft, although I suppose the letter, on its face, is, let us say, fairly innocuous and routine. * * *

I would refer to a letter dated May 16th. Then you continued as follows:

"A. * * * The letter of May 19, 1961 to the Securities and Exchange Commission is, in my view, a clear interference with the management of TWA."

Do you now recall your testimony in that regard?

A. I am sure I so testified, Mr. Davis.

Q. Would you like to change that testimony now?

A. No. Are we talking about the same thing here?

Q. The letter of May 19th. May I show you Defendants' Exhibit 12 as the letter of May 19th?

A. My testimony is now, and apparently my testimony was then that I considered this a clear interference or an attempt to interfere in carrying on the business of TWA.

Q. I now would like you to explain the manner in which you believe this letter interfered with the management of TWA.

A. Well, it was done, in my opinion, for the purpose [fol. 6661] and with the partial effect of delaying our registration becoming effective, with an aim, I believe, of so involving that registration in delay and controversy as to cause Boeing financing to abort, and to make it impossible for us to finalize our Boeing financing on the 31st of May. [fol. 6662] Q. Mr. Tillinghast, I am going to respect your opinions as being your personal opinions. At this point I would like to ask you to state as fully as you can the facts and circumstances which had come to your attention, which is the basis of that opinion.

Mr. Sonnett: May I object to the form of that question. I think the witness gave a responsive answer to the question.

The Special Master: Isn't this a further development of that question?

Mr. Sonnett: I think with the wind-up that Mr. Davis gives his question, it is argumentative in form, he having asked the witness for his views, then says in effect he is not interested in those, he now wants to talk about something else. I think he just ought to put the question, and if so I will object on the ground it is repetitive, because the facts and circumstances preceding the date in question, the witness has testified to at great length a number of times. The record is full of it. This is a letter of May 19th.

The Special Master: If you ask the question as to the basis for his opinion, and confine it to anything he has not already described—

[fol. 6663] By Mr. Davis:

Q. I do not ask you, Mr. Tillinghast, to repeat anything that you have already said. You may incorporate anything you have already said by reference. I am interested in your stating as fully as you care to, the basis for the opinion you have just reiterated.

A. Mr. Davis, yesterday or the day before, I testified to the various circumstances which raised a great question in my mind as to whether or not this request for a week's delay was a genuine request, or was part of a scheme or device to delay the effectiveness of our registration and the offering of our debenture, and through that means to upset the consummation of the Boeing transaction.

I testified once before, I believe, although on the chance I am mistaken, I will say again that one of the reasons that convinced me of this was a statement that you are alleged to have made, to the effect that one thing that just was not negotiable was the Boeing purchase transaction in that you would do everything in your power to prevent its being consummated.

Q. Who reported to you these alleged statements attributed to me?

[fol. 6664] A. Mr. Reed.

Q. When?

A. I would say at about the end of May, or the first of June. I can't remember the exact date.

Q. Let me understand something else then, Mr. Tillinghast. Is it your testimony that at the time this letter of May 19th to the Securities and Exchange Commission and TWA came to your attention, you did not then consider it an interference with the affairs of TWA, is that correct?

A. No, that is not correct, Mr. Davis. I did so consider it.

Q. Then I would like you to refer to the facts that you had on or before May 19, 1961, which led you to the opinion you have expressed, and to what you have described as an aim on the part of the Tool Company to upset the Boeing transaction, and again I want to say before Mr. Sonnett interrupts me, that I am not asking you to repeat anything that you have previously testified to. You may refer to that by reference.

A. I think I have several times testified, Mr. Davis, about those things which led me, let us say from the outset, to be very concerned with whether this was a diversionary maneuver.

[fol. 6665] I have also testified about your own appearance at the board meeting, and the things that you said, which convinced me that my original suspicion that the aim of this was to divert and to delay, was a correct conclusion.

Q. In other words, your conclusion or opinion was based upon the facts that you have described in some detail in your deposition to date, is that correct?

A. That is correct.

Q. Is it fair to say that your characterization of the other documents that you identified on your deposition of January 10th, is also based upon those facts that you have heretofore described in your deposition?

A: Without going through each one of them, Mr. Davis, I would say generally yes, and I think I should add one other thing as part of the background against which this matter had to be viewed. I did not have any participation in them myself, but I was told by various people at various times that numerous attempts on the part of the voting trustees to meet with Mr. Hughes, or to find some basis for establishing a modus operandi, and the constant frustration of those efforts, and I am sure that what I had [fol. 6666] heard in that regard was one of the bits of background against which my judgment was formed as to what the purpose and aim of these various letters and actions was.

Q. Let me refer you to page—excuse me, are you finished? Let me refer you to page 668 of your testimony, Mr. Tillinghast, where your answer starts at the top of the page, when you refer to a letter of May 24, 1961, from Mr. Settles to Mr. Duckworth, which on its face is harmless except in the light of the purpose for which it was written, and then you continue as follows:

"The same—well, on May 25th, 1961, there is a letter to Mr. Hocker of the Securities and Exchange Commission,

which I deemed to have been for the purpose of delaying the effective of TWA's registration."

Do you see that testimony?

A. Yes.

Q. Let me hand you Defendants' Exhibit 11-D, which is a letter by me dated May 25, 1961, to Mr. Hocker, and ask you if that is not in fact the letter that you identified was referred to on page 668 of your testimony? Your answer is that it is, is that right?

A. Yes.

[fol. 6667] Q. Who called that letter to your attention, Mr. Tillinghast?

A. May I see it again, Mr. Davis, please?

Q. Yes.

A. I am not altogether sure that I can say at this point, Mr. Davis. I think I received a copy of it in the mail, but possibly counsel gave it to me. I am just not sure at this point. Perhaps my own copy of it would refresh my recollection, but from that I can't tell you positively.

Q. Did someone explain to you the meaning or effect of this letter?

A. I don't believe so.

Q. Let me call this portion of the leter to your attention. After the first sentence of the second paragraph, which reads as follows, "As I told Mr. Hocker, my client Hughes Tool Company disclaims any liability or responsibility with respect to said registration statement, or any statements which appear therein or omissions therefrom.

"Said registration statement was prepared without consultation with or approval by Hughes Tool Company or its counsel. Furthermore, Hughes Tool Company has not acquiesced in, nor does it acquiesce in the acceleration of [fol. 6668] the effective date of said registration statement. However based upon a limited review of amendment No. 6 thereto, and amendment No. 7 which was received by me late yesterady afternoon, Hughes Tool Company has no desire to delay appropriate action by the Securities and Exchange Commission in the circumstances making said registration statement effective."

Did you give consideration to that portion of this Defendant's Exhibit 11 in connection with your testimony, Mr.

Tillinghast? Had you given consideration to that portion of the letter I just called to your attention, in connection with your testimony?

A. Mr. Davis, answering a question that you asked me a moment ago about how did I get this, I notice from the last paragraph that a copy of it was sent to me, and I am sure I received it in the normal course.

Answering your question about when I testified the other day did I particularly notice and ponder the significance of the part that you have just read—no, I did not.

Thirdly, is my answer changed? No, it is not.

Q. May I ask you another question? Isn't it a fact that when this letter was written to the Securities and Exchange Commission, the registration statement of TWA had in [fol. 6669] fact become effective?

A. I gather that is the case, and that is why I think the statement to which you referred was more a polite acquiescence of the inevitable rather than any gesture on our favor.

Q. What I am trying to get at, Mr. Tillinghast, is for you to explain to me what are the facts which support your conclusion that a letter acquiescing to what has taken place constitutes an interference with the affairs of TWA.

A. At the risk of being repetitive, Mr. Davis, let me say once again that I considered that this whole line of correspondence, this whole line of activity, had but one purpose in mind—strike "but one purpose in mind"—has as its principal purpose the disruption of the Boeing purchase contract. I believe you said as much yourself. It is all part of one plan and scheme, in my judgment, and every piece of paper written in pursuance of that plan and scheme constitutes, in my opinion, an improper interference with the affairs of TWA.

• • • • • • •

[fol. 6695] Q. My question was directed, really, Mr. Tillinghast, to facts relating to transactions or relations between the Tool Company, or Mr. Hughes, and these financial institutions which formed the basis for your conclusion that TWA had a heritage of delays, or unsatisfactory financing relations.

A. Mr. Davis, so far as that is concerned, I would have to go back to the article in Fortune.

Q. That is what you were relying on primarily?

A. The Spook and The Banker—with respect to relations between Hughes and the financial institutions. I have been told—

[fol. 6696] Q. By whom?

A. I believe by Mr. Rowe and by Mr. Sessel, and possibly others that I don't recall at the moment—that that was a very accurate article. From Mr. Reed and Mr. Rowe I know that all sorts of difficulties were encountered in actually getting delivery of the 880s.

I also know it from Mr. Rummel. That Mr. Hughes had agreed to deliver pursuant to the 1960 settlement.

I know that Mr. Hughes was at least difficult in permitting Hughes' directors to constitute a quorum of the meeting of TWA following the 1960 settlement.

Q. By "settlement" you mean financing?

A. The 1960 financing, yes. I had no reason to feel that I could count on any different tactics from Mr. Hughes than those which apparently had taken place, and I had no intention, having been in this position approximately a month, of being caught with a big plane order on my hands and no financing to cover it.

Q. Did anyone ever tell you that should the Hughes Tool Company be successful in refinancing this 1960 financing, [fol. 6697] it would become impossible for TWA to obtain financing necessary for the Boeing program?

A. No.

Q. Nobody ever told you that?

A. No.

Q. And you were satisfied that could be done, even though the voting trust terminated; is that correct?

A. No, I wasn't satisfied one way or the other, Mr. Davis. So far as I was concerned, when as and if Hughes Tool Company could terminate the voting trust according to the provisions thereof, it was perfectly free to do so, and that was none of my business.

My business was to run TWA in accordance with the interests of TWA and neither to favor Hughes Tool Com-

pany nor to discriminate against Hughes Tool Company, and that is the way I have tried to run it.

Q. So that your concern as to the inability of TWA to finance Boeing was wholly related to the possibility of Hughes Tool Company realizing some $100 million in cash or thereabouts if it had been permitted to have a secondary at the time of that TWA primary offering of subordinated debentures?

[fol. 6698] A. That's correct.

Q. And the report to you by Mr. Leslie that this might be what Mr. Hughes or the Tool Company had in mind, that was not a matter that concerned you at all?

A. I didn't consider what the Hughes Tool Company proposed to do in a financial way was any proper concern of mine.

Q. And you consider your testimony today to be consistent with the testimony you have given heretofore?

A. I do.

Q. Going back to this meeting of May 29th, did you have occasion at that time to discuss the interfering activities by the Tool Company, or its representatives, or counsel, with Mr. Keehn?

A. Yes, I have already testified to that.

Q. You have testified that you did. Now I would like you to tell me how that meeting came up and what you said in that regard.

A. I just testified to that about 10, 15 minutes ago.

Q. I don't believe that you have other than to advert to the fact that you were worried that Mr. Hughes might be [fol. 6699] doing something.

I would like you to tell me, did you discuss with Mr. Keehn the letters to the Securities and Exchange Commission?

A. No.

Q. Just what did you discuss? Can you tell me what took plage in relation to the activities of the Tool Company which you felt were interference with the management of TWA?

A. I said, in effect, Mr. Davis, that I considered that the recent actions of the Tool Company had been for the

purpose of preventing consummation of the Boeing purchase; that they had already succeeded in frightening out one of the insurance companies; that this represented the first, let us say, large project of an independent TWA management; and that if they were to accomplish what they sought by setting up a voting trust, that I thought in this hour of crisis, if you will, they ought to support the management of TWA doing what it considered to be in the best interests of the company.

And if in this particular instance Hughes proved his ability to prevent the management doing what their judgment told them they should do, that to my mind it presages [fol. 6700] a breakdown of the whole situation.

Q. Will you please explain how the Prudential was frightened off?

A. By the letter that you wrote, and by the fact that they didn't want to get into a controversial situation with a controversial person.

Q. Which letter that I wrote do you believe frightened them off? May I refer you to a letter dated May 26, 1961, which is Defendants' Exhibit 11F. Although I don't want to suggest to you this is the letter, but I am guessing, but I want to help you, if I can.

A. No, this isn't the letter.

Q. The letter to the SEC?

A. The letter to the SEC.

Q. The May 19th letter?

A. The publicity connected therewith.

Q. What is the basis for your believing that Prudential was frightened off by reason of this letter of May 19th to the SEC?

A. I would say two facts, Mr. Davis: one is that obviously it would have that effect, that potential effect; and, secondly, that Mr. Wadsworth told me from conversa- [fol. 6701] tions he had with Chappalear, he was convinced that was the sole reason.

Q. Your conclusion to that effect was based upon what Mr. Wadsworth of Dillon, Read told you?

A. That's correct, plus what seemed to me obvious on the face of it.

Q. Obvious on the face of the letter?

A. Obvious on the face of the situation.

Q. You are still referring to the situation as developed in your testimony?

When did Prudential indicate directly or indirectly that it was withdrawing from this financing program?

A. Approximately the 24th of May.

[fol. 6702] Q. How was that done?

A. It was done in a conversation with Mr. Wadsworth, to which I have already testified.

Q. Between Mr. Chappalear and Mr. Wadsworth?

A. I believe it was Mr. Chappalear.

Q. Can you give me the substance of what Mr. Wadsworth told you was the conversation he had with Mr. Chappalear or anyone else at Prudential?

A. All that I can remember at this particular time was that there were several conversations, the first one or two of which had to do with requests by the Prudential for information relative to the voting trust and possible means by which it might be terminated.

I can't bring to mind exactly what the problem is at this moment, but they had some problem troubling them as to the permanence of the voting trust, and the ability to satisfy themselves that it couldn't be circumvented.

Then the final conversation was one in which Chappalear called Wadsworth, and told him that he was very embarrassed. I believe he said this was the first time he had ever been turned down by the committee on something which he had recommended, but that they were not going to get into this situation, and he said that this is one you couldn't [fol. 6703] reopen with a crowbar. There is no point in coming back.

Q. And Wadsworth told you this on the 26th of May; is that correct?

A. Wadsworth told me this—I don't know exactly when. He didn't tell it to me on the 26th of May, because I was in Seattle that day. I believe, in fact, he first told Mr. Leslie, and Mr. Leslie told me at some subsequent date. I don't remember exactly when I discussed it with him myself.

Q. But some time before the 29th?

A. I am not sure that I discussed it with him myself before the 29th. As I say, I am quite sure that I first learned about it through Mr. Leslie.

Q. I understood you to say that on the 29th you were telling Mr. Keehn that the Prudential had been frightened off?

A. Yes.

Q. So somebody had told you that before the 29th?

A. Yes. Mr. Leslie told me the day it happened, which was either the 23rd or the 24th.

Q. You just said that you were aware of several requests by the Prudential—about the requests on the voting trust, and how it could be terminated.

[fol. 6704] A. All I can recall at this point is that they spoke to Ted Wadsworth, and wanted some information relative to it. I believe he called Mr. Leslie, and I learned of it through Mr. Leslie.

Q. Do you know what Mr. Wadsworth told the Prudential?

A. I think I did know. I am quite sure I did not. I can't bring to mind at the moment just what the point in issue was. I knew it at the time.

Q. How long had the Prudential been interested in participating in this financing?

A. I don't know exactly. Ever since I got into the picture they had been considered a party to the financing.

Q. Is there a question in your mind but that the Prudential had been aware for some time as to the existence of this voting trust?

A. There is no question about that.

Q. Have you any reason to believe, or did anyone ever tell you that the Prudential withdrew from this possible participation because of the possibility that the Hughes Tool Company might re-finance the 1960 financing, and thereby terminate the voting trust?

A. No.

[fol. 6705] Q. Did anyone ever tell you as to why the Prudential was so interested for detail information as to the circumstances under which the voting trust could be terminated?

A. I had the impression that they had before them, and were concerned with the question of whether the voting trust was sufficiently copper-riveted that they would be prepared to take the plunge in face of the fact that there seemed to be a controversy developing.

Q. So you understood that the Prudential was interested in a copper-riveted voting trust?

A. That is correct.

Q. Who told you that?

A. Mr. Leslie and/or Mr. Wadsworth.

Q. Mr. Sessel?

A. No, I don't believe I talked of this with Mr. Sessel.

Q. Did you ever make an effort to communicate with the Prudential to urge them to consider continued participation in this financing?

A. I personally?

Q. Yes.

A. No.

Q. Did you have any particular conversation with any- [fol. 6706] one to act on behalf of TWA, to make efforts to persuade them to remain interested in this financing?

A. I can't recall, Mr. Davis, whether my conversations were solely with Mr. Leslie or with Mr. Leslie and Mr. Wadsworth, but I know it was Mr. Wadsworth's strongly expressed opinion that there wasn't any chance of reopening the thing.

I think, as a matter of fact, he did have some further conversations the next day, and his advice was that this was a completely closed matter, and "You might as well forget about it."

Q. I don't understand what you mean by reopening the thing, and something being a closed matter, Mr. Tillinghast. Could you explain what it meant to you, if that was the expression used by Mr. Wadsworth?

A. I have already several times said that Mr. Wadsworth was told this was something you couldn't reopen with a crowbar.

Q. What thing was something which couldn't be reopened with a crowbar?

A. The Prudential turndown.

Q. Did he explain to you what brought about this change of mind on the part of the Prudential who had been interested in this thing since before you became president, and [fol. 6707] this turndown?

A. Yes. He said that in his opinion it was the fuss being kicked up by Hughes Tool Company.

Q. By that you mean the request for the extension of time—what you described from May 11th until the registration statement became effective on the 24th?

A. Yes, the sequence of events. I am talking principally about the position which you took on the 17th of May.

Q. Before the board of directors?

A. And the SEC.

Q. And the SEC?

A. Mostly the SEC.

Q. And you were told by Mr. Wadsworth that it was the efforts made by the Tool Company to raise $100 million in cash through a secondary offering that closed the door down tight, that could not be reopened? Is that your testimony?

A. No, it is not my testimony.

Q. What is it that Mr. Wadsworth told you to explain to you, as chief executive officer, as to why the Prudential, who had been interested in this financing for some time, some time prior to the time you even took office, in this period of May, the thing was closed, could not be reopened, [fol. 6708] and forget it. How did you satisfy yourself that was a fact?

A. To my mind, Mr. Davis, the likelihood of this was so obvious, that I didn't go around asking questions such as "Do you think financial institutions are some times scared away by controversy?" Of course, they are. It was perfectly obvious what the problem was, and I have no doubt you intended it to be that way.

Q. Let us state on the record the fact which made it so obvious. Assume for the moment I don't understand the obvious facts as readily. Will you please do that for me? What was it that was so obvious to you, that the Prudential Insurance Company should have withdrawn from its participation in this financing between May 11th and May 24th?

A. All I can say, Mr. Davis, is that my experience makes it sort of self-evident to me, that financial institutions pre-

fer frequently not to put large amounts of money into situations which are fraught with controversy.

Q. What controversy was in existence between the Tool Company and TWA during this period we are talking about? At this point, Mr. Tillinghast, let me remind you that unless you are looking into a crystal ball, you had no [fol. 6709] idea of what was going to develop subsequently, did you?

A. I had a suspicion that turned out to be frighteningly accurate.

Q. Do you think the Prudential had the same crystal ball?

A. I suspect they had enough foresight to suspect some of the things that might lie in store.

Q. The effort of the Tool Company to re-finance and terminate the voting trust?

A. No.

Q. What controversy were you expecting, or you understood the Prudential was visualizing, as a result of the request made by the Tool Company through Merrill Lynch on May 11th for an opportunity to arrange some $100 million, and turn this interim note from the 1960 financing into cash?

A. That is not what I am talking about.

Q. Let us put it on the record.

A. Let me finish. What I am talking about is the letter you wrote to the SEC on the 17th, I believe, of May, which contained numerous charges, and was well publicized in the papers, and certainly was fraught with controversy.

[fol. 6710] Q. Let me hand you now Defendants' Exhibit 12. Please indicate the portions of that letter which you considered to be these "numerous charges," which in your judgment was the basis for the Prudential withdrawing from this financing.

A. Mr. Davis, beginning on page 11 of this letter where it says:

> "Mr. Davis, who is approving this letter, states that based upon every fact known to him to date, including conversations had with Mr. Howard Hughes, and other representatives of the Tool Co., the position being taken by the Tool Co. is not a device or an effort on the

part of the Tool Co. to interfere with the offering contemplated by TWA to its common stockholders."

Beginning with that sentence, and reading on through the following paragraphs—and I will try to pick up here where to stop—but the part to which I am referring is that part commencing where I just read, and continuing on—

Mr. Davis: May I suggest while the witness is looking at this, a recess be taken. Perhaps the witness, with the assistance of his counsel, will be able to identify the portions [fol. 6711] of the letter more readily.

The Special Master: Let us take a seven-minute recess.

(Whereupon, a short recess was taken.)

The Special Master: Do you want the question read to you?

By Mr. Davis:

Q. You were in the process of identifying—

A. I want to get the question accurately, so I can give you an accurate answer.

(The question was read.)

A. Continuing on to the end of the letter.

Q. Did anyone tell you that it was those portions of the letter which frightened the Prudential?

A. No.

Q. This letter was addressed to TWA and the SEC, was it not?

A. Correct.

Q. And it is dated May 19th, and presumably was mailed on or about that date. Do you know when you received your copy?

A. I presume my copy would show that it was the next day or so. You say it was mailed on the 9th, which was a Friday.

[fol. 6712] Q. Actually, it was not until Saturday, because if you will recall, your counsel indicated anxiety of receiving it as soon as possible. The SEC required it be done in 24 hours, and the operation was a little behind schedule.

A. I think I probably first saw it on Monday, the 22nd.

Q. And it is addressed to TWA, to your attention, and to the SEC, the attention of Mr. Hocker?

A. That is correct.

Q. Do you know or can you explain how this letter came to the attention of Prudential?

A. Not specifically, Mr. Davis, no.

Q. What is your information as to how it got to the attention of Prudential? May I suggest to you perhaps Dillon, Read sent it to them?

A. I just don't know, Mr. Davis. I would just be guessing.

Q. If you received this letter on Monday, the 22nd, I thought you testified that you heard the reaction from the Prudential about the 24th of May, didn't you?

A. That is correct.

Q. And you have no information whatever as to how this letter got into the hands of the Prudential so as to frighten [fol. 6713] them?

A. Mr. Davis, I don't know whether this letter, as such, got into their hands. At the moment I have no recollection of any knowledge as to whether it did. It may have gotten to them, or excerpts from it may have gotten to them through the revised registration statement, because, as you will recall, portions of this were—

Q. In the registration statement?

A. Yes.

Q. That was by reason of action between counsel for TWA and the staff of the SEC, wasn't it?

A. That is correct. They may have read about it in the newspapers. At this particular point in time I just can't tell you how they learned about it, but I am quite sure that they were aware of it.

Q. Do you know who, if anyone, undertook to make a copy of this letter available to the other lending institutions, other than the Prudential?

A. Well, at this particular sitting, I can't say positively that a copy of it was made available to them, but I presume that at some point along the line they obtained copies.

* * * * * * *

[fol. 7304]

RULINGS BY SPECIAL MASTER ON EFFECT OF DEPOSITIONS ON ADDITIONAL DEFENDANTS

The Special Master: In regard to your client, Mr. Kaminer, and Dillon, Read, being bound by these proceedings, as well as the two life insurance companies, I don't think that question needs to be ruled on at this time. It is properly before the Court as such time as the evidence is offered in the case in Court.

On the other hand, I want you to have every opportunity to be here and protect your clients' interests during the taking of these depositions as soon as you were made parties, and I don't expect, as far as any of my rulings are concerned, to hear you say that because you weren't here as soon as you were given notice after you were made parties you have any rights to object that you didn't have a chance to be here and participate if you cared to.

[fol. 7305] I think the law in this jurisdiction, and I believe it is the law generally, is that if you have an opportunity to cross-examine, or someone who represents comparable interests does cross-examine, so that your interests are properly represented as far as cross-examination is concerned, you can be bound by the testimony even though you weren't personally represented. But I think that question will come up during the trial at the proper time, and I do not purport to rule on it at the present time.

[fol. 7306] On the other hand, if you absent yourself, any of you, as far as your clients are concerned, you do it with due notice that I have given you every opportunity to participate and protect your clients' interests.

* * * * * * *

[fol. 7593] By Mr. Davis:

Q. Mr. Tillinghast, I gather from your prior testimony [fol. 7594] that as a result of these requests or suggestions from Mr. Breech or Mr. McCone or others you consulted the various people?

A. Yes.

Q. In order to determine the nature or scope of any existing rights or obligations relating to those four 880s or thirteen 990s?

A. To determine whether there were any obligations.

Q. Will you identify the people that you consulted in that regard?

A. Oh, I am sure I consulted Mr. Leslie, Mr. Cocke, Mr. Rummel, Mr. Rowe.

Q. Prior to this meeting on March 31st you arrived at the conclusion, I assume?

A. That is correct.

Q. One of the purposes of this meeting, or this item 2, was to present the result of your investigation and to get formal action or some kind of action by this executive committee ratifying or confirming your conclusion, is that right?

A. Well, no, I don't recall that I was trying to get the committee to confirm my conclusion as such. The question before the committee was whether or not to proceed with the Boeing purchase.

[fol. 7595] Q. But item 2 of the agenda was for action by the committee, wasn't it?

A. No, Mr. Davis, I don't recall these as being action items. These were subjects to be discussed, and I thought that one of the things that the committee ought to have before it reached a conclusion was a summary of our position vis-a-vis the 880s and the 990s.

Q. I refer to Point 3, which you indicated was a review of financing.

A. That is correct.

Q. That related to the review of financing for the Boeing program?

A. That is correct.

Q. What was there to review at this point, on May 31, 1961?

A. The status of the financing and the extent to which we had the commitments necessary to satisfy us that our financing was sufficiently in order to proceed.

Q. Turning to the next page of Exhibit 30, the one having the No. 728 in the lower left-hand corner, you see under item 1 reference to a report by RWR, which stands for Mr. Rummel, isn't that right?

A. Yes.

Q. Mr. Rummel then reaffirmed the findings of the equip-
[fol. 7596] ment committee?

A. That is correct.

Q. This is the equipment committee that you previously identified?

A. Yes.

Q. How did Mr. Rummel reaffirm the findings of the equipment committee? Was he expressing a personal point of view where he agreed with the findings, or just what did Mr. Rummel report? You can use those notes to refresh your recollection, Mr. Tillinghast.

A. I assume that.

As I recall it, Mr. Davis, we started out by Mr. Rummel discussing the relative advantages of the Boeing equipment and I recall in part, guided by this note here, that one of the things he particularly discussed was the delivery position situation.

As I recall it, in some of your prior correspondence you had taken a rather strong position that the delivery—a rather strong position that TWA needed jets very badly, and that the delivery positions on the 990s were sufficiently more favorable than those on the Boeings, that this was a reason for favoring the 990s over the Boeings.

Mr. Rummel pointed out, if I recall correctly, that at the
[fol. 7597] time the equipment report had been prepared, and at the time prior recommendations had been made, I believe in March and April, they had been made on the assumption that the 990 delivery dates would be more favorable than in fact they looked at the end of May.

Because of some structural problems the whole schedule on the 990s had sagged substantially, and at the time two serious problems existed; one, a purely technical problem as to whether or not Convair would be able to overcome a wing flutter problem and a drag problem sufficiently to make the plane roughly what it was supposed to be, and the other problem was a very serious management problem through which Convair was then passing, both of which, I believe, had had an affect on probably future delivery dates, and the point, as I recall it, that Mr. Rummel was making was that from a delivery standpoint the 990 situation was

even worse than it was at the time that he made his prior recommendations.

[fol. 7598] Q. You note that Defendants' Exhibit 30 includes the statement:

"Boeing most likely to make good contract delivery dates."

A. Yes.

Q. Did Mr. Rummel indicate in any way that he had checked with both Boeing and Convair as to probable contract delivery dates of the two types of aircraft, Boeing vs. 990?

A. So far as Boeing is concerned, Mr. Rummel said at this time, and indeed on a number of other occasions, that TWA had always had very good experience with Boeing from the standpoint of the meeting of delivery dates, and that he had every confidence that Boeing would meet the delivery dates which they said they would meet, and he had very little confidence that Convair would do so.

Q. In other words, your testimony is that Mr. Rummel in effect was saying that based upon his past experience with Boeing aircraft as contrasted with past experience with Convair the Boeing Company was more likely to deliver on the contract date than Convair?

A. In part, that was what he said, yes.

Q. Addressing yourself to the ability to deliver on sched-

[fol. 7599] ule, what else did he say? Did he indicate in any way that he had made particular inquiries at one place or the other?

A. I don't remember what he said about particular inquiries, but he talked about the fact that Convair was in very deep trouble, both technically and management-wise, that we were having serious problems with respect to our 880 delivery dates, and that Convair seemed unable to meet those, and that he had no confidence in Convair's ability to meet the delivery dates that were then in effect with respect to Hughes Tool.

Q. This reference to difficulties that Convair might be having with its 990 program, did Mr. Rummel indicate whether that was based upon general trade talk or news-

paper accounts, or was that based upon the result of an investigation either conducted by him or under his direction?

A. Well, it was, I think, based on two things. The troubles that Convair was having at the time were very well known in the trade, and they were a subject of very common talk.

Secondly, we had a chap at Convair in connection with the 880 program, and I know Mr. Rummel talked with him frequently and obtained from him at least opinions as to [fol. 7600] what the state of the situation was at Convair.

Q. In connection with this discussion as to the probable advantage of contract delivery date or rather, I should say, certainly of contract delivery date from Boeing as against Convair, did anyone indicate that that was an important factor to be considered in deciding the kind of equipment to try to obtain?

A. I can't remember, Mr. Davis, exactly what was said about it at this time, but that was considered a matter of the highest importance.

TWA had just gone through a very unfortunate and damaging experience with respect to the delays on the 880s, it was still experiencing delays on the 880s. We all considered it of the highest importance that we have a definite delivery schedule that we had every reason to believe we could rely on so we could do our planning and not get in the position that we had gotten in on the 880s, where people were trained and retrained, and we had no airplanes for them to fly.

Q. Is it fair to say that at that time the delivery schedule promised by Boeing in its May 1st agreement was of the highest importance to TWA?

A. Well, it was of great importance, yes.

Q. Still on that same page, at the bottom, you see where [fol. 7601] it says "Record that TWA ordered . . ." the word "ordered" being underlined ". . . not to become involved in 990 affairs."

Can you explain what was said or what took place at that meeting as reflected by this notation?

A. I am not sure that I can in detail, Mr. Davis, and I am not sure to what extent I am calling on other conversations

that I had with Mr. Rummel and what was actually said at this particular meeting, but Mr. Rummel, from the time that Hughes had first ordered the 990s, had been trying to find out whether or not these were destined to come to TWA, and if so, what systems and subsystems they would have on them, what type of cockpits they would have, and he had been told, I believe by Mr. Hughes, to have nothing to do with it, and I believe I recall a telephone—that Mr. Rummel told me about a telephone conversation which he had with Mr. Hughes at one point, when he said to Mr. Hughes, "We need to know what to plan on, Convair has already begun to fabricate some subassemblies for the 990s, and if we are to take these planes we need to be following that and know what is going on and inspect the work as it goes along," and he was told by Mr. Hughes that he and his people were to have nothing to do with it, and if they [fol. 7602] came to any 990 work in the plant they were to walk around it and look the other way, just not have anything to do with it at all.

I think that was mentioned at this meeting.

Q. You see then "Who? Cook to RWR, Hughes to RWR." Does that refresh your recollection?

A. No, it doesn't, Mr. Davis. I can only assume that that is something that I guess Mr. Duckworth, who was taking the notes, put down for himself.

I call your attention to the fact that over on the page marked 729 there is a—no, that is something else again. I am sorry.

Q. Do you have in mind some discussions that you had with Mr. Rummel at some time other than this meeting of May 31st relating to the 990s and TWA or the relationship between this 990 program and TWA's program equipment?

A. Oh, yes, Mr. Davis. I had many conversations with Mr. Rummel on this subject.

Q. From the time that you had become chief executive officer and this date on May 31st?

A. Yes.

Q. Do you recall anyone in particular, or the occasion for that inquiry or conversation?

[fol. 7603] A. My recollection is, Mr. Davis, that the first time I discussed with Mr. Rummel the equipment program

that Mr. Rummel touched upon the 990s and their existence and stated that they were in a very ambiguous position, and that no one at TWA really knew whether they were available to TWA or weren't available to TWA.

Now, except for that, I don't believe I had any significant discussions of the 990 situation until, oh, about the middle of May, when you raised the question of whether or not TWA had an obligation to take the 990s, and at that point I began to get into it in great depth, and from then until the 31st I several times discussed the matter with Mr. Rummel in the course of satisfying myself that there was no obligation to take them.

Q. Turning the page to the next one, where you see the entry or notation, "RWR reviewed various contacts with Cook concerning specs of 990s," this refers to Mr. Raymond Cook?

A. Yes.

Q. What did Mr. Rummel review with respect to the various contacts with Mr. Cook concerning the specifications of the 990s?

A. Mr. Rummel explained that Mr. Hughes had taken the [fol. 7604] position that he, Mr. Rummel, and his people were to have nothing whatever to do with the 990s, that he, Mr. Rummel, was concerned about the fact that maybe Mr. Hughes had in mind that these were going to be put with TWA, and he was desperately anxious to find a means of associating himself and his people with what was going on so that decisions could be made as to what systems were going to be in these planes, and so far as possible, to assure their compatability with systems that were in other TWA planes, and he said that he discussed this problem with Raymond Cook, and through Raymond Cook, for a period of time, set up a liaison which permitted them—permitted him and his people to keep somewhat corrent as to what was going on on the 990s, and I believe that came to an end when Mr. Hughes found out about it and told him to have no more to do with the 990s.

Q. Can you identify the period of time that Mr. Rummel was referring to when he was reviewing these various contacts with Mr. Cook? I take it it was prior to 1961, or was it during 1961?

A. I am not sure that I know, Mr. Davis. The impression I have is it was the second half of 1960, but I wouldn't be positive about that.

[fol. 7605] Q. Then you see following that "Discussions with or at Convair—Loomis et al.—concerning 990."

Does that concern discussions Mr. Rummel had at Convair with Mr. Loomis and others concerning the 990?

A. I believe it does, yes.

Q. Mr. Loomis was at the time the top executive of the Convair Division of General Dynamics?

A. Well, I can't say just what Loomis' position was at the time. There was a substantial turnover going on at Convair at this period, and I don't—I am not sure just what Loomis was at the time, but at one time a little later than this he was general manager, I think.

Q. Do you recall the nature of substance of what Mr. Rummel said as to the discussions he had had at Convair with Loomis and others concerning the 990?

A. That doesn't stick in my mind very well, Mr. Davis. As far as I can recall it, he had just discussed the situation with Mr. Loomis and some others out there, and they were optimistic that they were—that they had the wing flutter problem cured, and that they were making satisfactory progress with the 990.

Q. You see the next item, "Call Rummel from Hughes [fol. 7606] re breaking off discussions with Convair—one man at a time."

Does that refresh your recollection as to what Mr. Rummel reported at that meeting?

A. My recollection is that this doesn't relate to the 990s, but rather relates to the 880s. If I recall correctly, Mr. Rummel said in the course of this discussion that at some point in the production of the 880s, in order to delay the program and prevent delivery of the planes in accordance with the schedule at which they were being produced, Mr. Hughes had instructed Mr. Rummel that one man at a time he was to take his inspectors off the work so that gradually it would just bog down for want of inspectors.

Q. Which work would bog down?

A. The 880 work.

Q. You think at this point the discussion changed from the 990s to the 880s?

A. That is my belief, yes.

Q. Item 3, "Referred to delivery proposals," which compares the delivery proposals of the 990s vs. the 131 Bs?

A. Yes.

Q. So the conversation then switched back to the 990s— [fol. 7607] is that your recollection?

A. That is my recollection.

Q. If you will turn to the page which has the number 731 in the lower left-hand corner, you see the notation which reads "Wadsworth commented on desirability of long-term advantage of Boeing vs. Convair as being more important than controversy over possible delivery schedules"—you see that?

A. I do.

Q. Would you describe what comment Mr. Wadsworth made on this question of the advantage of Boeing equipment vs. Convair equipment?

A. So far as I can recall, all that Mr. Wadsworth said was that he thought that we ought to be considerably more concerned by the long-term advantage of one over the other than we should by the immediate delivery schedule of one vs. the other.

Q. You see the next item, which reads "RWR advised that after '62, '63 Boeing earnings potential greater than Convair"—you see that?

A. Yes.

Q. Does that indicate that there was a greater immediate earning potential in the 990 than in the Boeing which subsequently the Boeing would presumably overcome?

[fol. 7608] A. That's correct, Mr. Davis. If I recall the detail of it, assuming that the Boeing—assuming that the Convair delivery schedule was kept, the Convairs would come in a little faster, and because they would come in a little faster would earn a little more at the beginning. I believe that the same study showed that by the end of 1963 the Boeings, by reason of their greater earning capacity, would have overtaken the Convairs or an equal number of Convairs, and by that time, from then and after that time, the Boeings would show greater earnings than the Convairs.

Q. Would you explain what was discussed at that meeting to indicate that the earning capacity of the Boeing at some point in the future would be greater than the earning capacity of the 990?

A. Well, I am not sure that I can, without being refreshed, remember this in detail, but this got into, among other things, the six-wide seating of the Boeings, the capacity of the Boeings, the Boeings were larger ships than the Convairs, and as I talk here I recall that one of the factors in this picture was the growth curve for air travel, and the Boeings have greater capacity and lower seat mile cost [fol. 7609] over a period of time showed substantially better earning capacity than the 990s.

[fol. 7610] Q. On the assumption that all the seats would be filled?

A. Not on the assumption that all the seats would be filled, but on the assumption that a certain percentage of the seats would be filled.

Q. That you could carry more passengers on the Boeing than on the Convair?

A. That is correct, and that you had a lower seat mile cost.

Q. An operating lower seat mile cost?

A. That is correct.

Q. Because a seat mile cost is determined by the number of seats on the plane, whether or not it is occupied?

A. That's right.

Q. You see on the next page, under point 2, the following appears:

"CCT on TWA obligation to Toolco to acquire Convairs." I take it that this refers to some statement or presentation that you made on that subject?

A. That is correct.

Q. Before Mr. Rowe made his contribution?

A. That is correct.

[fol. 7611] Q. Would you describe what it is that you presented to that executive committee meeting on the TWA obligation to Toolco to acquire Convairs?

A. In substance, Mr. Davis, I called their attention to the fact that assertions had been made by you that TWA had or might be deemed to have an obligation to take the four 880s and the 13 990s, that Mr. Breech had particularly

asked me to be certain that there wasn't any lurking obligation in this regard, that I had talked with the individuals there, that I had talked—or I had talked with a number of the individuals there, that I had talked with Mr. Rowe, and that so far as I could discover there was no basis whatever for such an obligation, and I believe I then said that I had asked Mr. Rowe to come to the meeting for the purpose, among others, of answering any questions that anyone might have on this score, that he had expressed to me the view that there was no obligation, but perhaps someone else would like to question him on the subject.

Then, as I recall it, Mr. Rowe said that he had been over this problem any number of times, that he could assure everyone present that there was no such obligation, and I believe he called our attention to the fact that under the orders of the Civil Aeronautics Board there couldn't exist [fol. 7612] such an obligation without the affirmative approval of the board.

Q. I understand that Mr. Rowe made a report on the legal nature of any contractual obligation which would have required CAB approval before it could be consummated or carried out.

A. Yes.

Q. But I understand from your prior testimony that the persons from whom you would obtain information as to the existence or origin of any obligation, express or implied, had been Mr. Leslie, Mr. Cocke, Mr. Rummel and Mr. Rowe.

A. Yes.

Q. There were present at that meeting Mr. Leslie, Mr. Cocke, Mr. Rummel and Mr. Rowe?

A. Yes.

Q. You mean you were telling them the result of what they had told you?

A. No. They were not the only people at the meeting, Mr. Davis.

Q. There were others present by invitation presumably to add something to the meeting, but what I don't understand is were these remarks being addressed primarily to these invitees.

[fol. 7613] A. Well, this was a general review of the situation, Mr. Davis, for the edification of everyone present so

that we could be sure that everyone was satisfied on every point that had been raised before we went ahead.

I might point out that on each of the subjects discussed one or more people present at the meeting had considerable background and knowledge prior to coming to the meeting.

Q. I appreciate that. Did anyone at that meeting purport to describe what the past practices had been under which TWA had obtained equipment prior to formalization of contracts subject to CAB approval?

A. I don't think anyone went through a recitation of that as such, Mr. Davis. I am quite sure that broadly speaking past practice was in people's minds, and indeed, the past practice was the only thing that gave rise to any serious discussion of the question at all.

Q. At that time did you understand the manner in which TWA in the past had been able to obtain equipment?

A. I understood it certainly to a degree.

Q. Based upon your conversations with Mr. Leslie, Mr. [fol. 7614] Cocke, Mr. Rummel?

A. In part, and what I had read.

Q. Read in the newspapers?

A. Magazines.

Q. Magazines?

A. Yes.

Q. Did anyone at that meeting express any different point of view than the one which you expressed?

A. No. As I recall it, everyone who expressed himself expressed himself in agreement with what I had summarized and Mr. Rowe had said.

Q. Did anyone indicate that the commitment of the Tool Company with respect to these four 880s or thirteen 990s varied from the manner or the practice followed in the past, whereby the Tool Company placed orders for aircraft and subsequently those aircraft became available to TWA?

A. Well, yes. As I have already testified, Mr. Rummel indicated that there was a special, full, secrecy with respect to the 990s which prevented him having the contact with the 990 program that he had had with other equipment programs.

* * * * * * *

[fol. 7843] Q. Is there any question in your mind, Mr. Tillinghast, that at that meeting Mr. Sessel said that neither [fol. 7844] he nor the banks nor the lending institutions would tolerate any compromise?

A. Of what?

Q. That was my next question to you, sir.

A. Mr. Davis, I have given you my best recollection of what Mr. Sessel, as I recall it, was saying, which was that it would be a great mistake to get bogged down into negotiations on the equipment program, and that you wouldn't get anywhere, and the financial people would fear that it was getting back into the same old rut of extended negotiations—

Q. But there was no subject for discussion of negotiating with Hughes any financing at this point, was there?

A. No. The question, as I said many times, was were we going ahead with the 990—with the Boeing program, or were we going to delay it so that we could have—

Q. Some 990s?

A. (Continuing)—so that we could give you an opportunity to present the facts that you were talking about presenting, and perhaps changing our minds as to whether the 990 program—whether the Boeing program should go ahead or should be modified to accommodate a 990 program.

[fol. 7845] Q. And Mr. Sessel in effect said that there was to be no compromise.

A. Well, I don't remember his talking about compromises. I remember what I just testified to.

Q. You have described the subject under discussion, Mr. Tillinghast, but I don't recall you testifying yet as to what Mr. Sessel said or the substance of what Mr. Sessel was saying. You are reading the notes, I understand that. But I am trying to get you to remember what Mr. Sessel in effect was saying in connection with the subject under discussion.

A. I have stated it several times, Mr. Davis. I have no recollection beyond what I have already testified to.

Q. Is there any question whatever in your mind that at that meeting Mr. Sessel said in effect that the lending institutions would not permit or tolerate or would not continue to participate in the 1961 financing if you or TWA com-

promised this Boeing program by leaving it open for the possibility of introducing some 990s?

A. Well, the question of compromising the Boeing program wasn't in front of us. We had three questions, as I tried to explain. We had three alternatives; we could go [fol. 7846] ahead, we could call it off, we could postpone. Those are the only questions that we were considering at this meeting.

Q. I am trying to direct your attention, Mr. Tillinghast, to what Mr. Sessel said, and I am referring you to the notes, which read, by Mr. Sessel:

"Advised . . ." In other words, Mr. Sessel advised the group " . . . advised that any sign of weakness on the part of TWA with respect to Toolco would cause banks to hold up their participation. Finance people want no part of Hughes or any compromise."

Mr. Sonnett: Are you going to read the bottom of that page too? There is further by Sessel.

Mr. Davis: The bottom of what page?

Mr. Sonnett: The bottom of the same page you just read from.

Mr. Davis: I have.

Mr. Sonnett: No, you haven't.

Mr. Davis: Mr. Reed interposing something.

Mr. Sonnett: After Reed—

Mr. Davis: I am trying to get the witness to testify as to what happened at that meeting.

[fol. 7847] Mr. Sonnett: You ask him about a particular line in this document at one point, and at other points you ask him what Mr. Sessel said at that meeting.

In the document it appears what Sessel said is noted elsewhere, indeed, on the same page you were just reading from.

By Mr. Davis:

Q. Isn't it a fact, Mr. Tillinghast, that you have looked over this Defendants' Exhibit 30 several times, today and yesterday?

A. Yes, that's correct.

Mr. Sonnett: Do you object to his looking—

Mr. Davis: I don't object to his looking at anything, Mr. Sonnett. I don't even object to you telling him what to say.

Mr. Sonnett: Why don't you just go about it in a little tidier way, and call to his attention references to Sessel as having said anything instead of picking out a line?

Q. Do you want to change any of your testimony now, Mr. Tillinghast?

A. No, I do not.

Q. Do you want to look at what your counsel is directing [fol. 7848] your attention to?

A. I have.

Mr. Sonnett: If you don't ask him about it, I would like to read it in the record.

Mr. Davis: We will come to it, Mr. Sonnett. I haven't skipped very much in this document yet.

Mr. Sonnett: With that assurance, I am quite happy to withdraw my objection.

Q. Do you see what is on the next page also, Mr. Tillinghast?

A. Yes.

Q. Take your time and read the entire document.

A. That is all right. I have read it.

Q. You read it before you came here today?

A. I read it here, glanced over it the other day.

Q. Isn't it a fact, Mr. Tillinghast, that following your question with respect to the possibility at a later date of introducing the 990 into the jet equipment program of TWA Mr. Sessel in effect said that the lending institutions would withdraw their participation on any sign of weakness with respect to this acquisition of jet equipment, and that they wanted no part of Hughes or any compromise with respect [fol. 7849] to this Boeing equipment program—isn't that what Mr. Sessel was in effect saying at that meeting?

A. I would say, Mr. Davis, that is partly so and partly not, as I recall it, and all I can do is go back and repeat once again that the question was one of your request, your statements that you had information not previously available that we ought to consider, and the question was whether

or not we should go ahead with our program as planned despite the fact that two or three days after that you were going to come in with some alleged information as to why we should do something different than follow out the Boeing program, and the question was should we go ahead with the program or should we delay the program, and as I recall it, Mr. Sessel's remarks were addressed to the question of getting into delays or were addressed to the question of delaying the Boeing program and getting into negotiations with Hughes, and he spoke, let's say, very strongly on the subject, that it would be a great mistake, that you would bog down in delays and endless negotiations, and that he didn't believe that the banks, if it looked as if the situation were reverting to the same old situation that had existed before, could be counted on to continue their support, because they wanted no part of Hughes or the prior situation. [fol. 7850] Now, in substance, that is the best that I can recall of what Mr. Sessel was saying at the time.

Q. Then Mr. Reed commended, first on the advice he had given to the voting trustees, and he also purported to give you some advice at that time, did he not?

A. Yes. I might say advice which I have religiously followed, and indeed, was trying to follow even before given.

Q. The note reads:

"Reed, has advised trustees they must always be open to discussions with any representatives of Toolco—also CCT must do likewise with respect to Toolco or any stockholder."

Do you recall the substance of what Mr. Reed in fact said at that meeting as reflected by the notes?

A. I think this again has to be read in the context of your desire to present 990 information to the voting trustees, to the financial institutions, I believe, to the management, and all sorts of people, and Mr. Reed was really, as I recall it, agreeing with what I had said earlier, and that was that the trustees and the management had to have constantly an open door and a willingness to sit down and listen to and [fol. 7851] discuss anything that the Tool Company or any other stockholder wished to present.

Q. Is that the substance of your recollection as to what Mr. Reed said at that point in the meeting?

A. It is.

Q. At that point were you discussing the telegram or other communications received by TWA suggesting or requesting that there be a meeting for the purpose of considering facts with respect to the 990s?

A. Well, Mr. Davis, I can't remember the exact chronology of all of these communications without refreshing my recollection, but as I recall it, during the two weeks preceding this there had been quite a number of communications, the thrust of a portion of which was that you had important things that you wanted to tell us about the 990s, and I believe that this whole discussion to which you are alluding here dealt with the question that was faced or presented by, on the one hand, the need to go ahead with the program, which some of us felt very deeply, and on the other hand, the need which we also felt to keep an open ear and an open mind to hear anything that you might want to say.

Q. That meeting on May 31st was on a Wednesday, was it not?

[fol. 7852] A. It was.

Q. You recall that Mr. Rowe had reported to the meeting that Dave had information important to the matters of the thirteen 990s?

A. That's correct.

Q. Which could not be made available before Friday?

A. That's correct.

Q. Do you recall the efforts made by Mr. Rowe to try to get the Tool Company to present that information on Wednesday rather than on Friday?

A. Well, I don't—I don't recall it at the moment. It might have been the case, Mr. Davis. I just don't recall.

Q. You were quite conscious of the fact that May 31st, Wednesday, theoretically, at least, or by the terms of the contract, the last day on which TWA could exercise its out?

A. That's correct.

Q. You don't recall whether or not an effort was made on behalf of TWA to get this additional information that Mr. Rowe had been informed about by May 31st rather than Friday of that week, on June 2nd?

A. I don't remember it specifically, Mr. Davis. I remem-
[fol. 7853] ber that we were urging you to hurry up and tell us whatever you had to tell us, but I am sorry, I don't have a specific recollection—

Q. Do you recall being advised by anyone that the delay was necessitated by the need of obtaining information from officers and representatives of Convair?

A. I don't remember anything about Convair. I remember general representations on your part that you had to take time to assemble the information you wanted to present.

Q. Isn't it a fact that Mr. Reed was addressing himself to the desirability of making yourself available for this communication on Friday as Mr. Rowe had reported a request that the information be presented on Friday rather than on Wednesday?

A. No, I think if I recall, Mr. Davis, Mr. Reed was just dealing in the generality of the attitude which we should take, with which I might say I was in complete agreement.

Mr. Davis, let me go back and say that in describing what Mr. Sessell said, this note at the bottom of page 739 about Hughes' constant practice of delay, month, week, day, hour, indicates to me that that is one of the times that he made this [fol. 7854] speech to which I have alluded before. I am not sure specifically in this connection.

Q. The balance of that note reads "possible desire to create distrust between board members."

A. Yes.

Q. Do you recall what Mr. Sessel said along those lines?

A. Well, I don't remember it particularly in the context of this meeting, Mr. Davis. This indicates that it was said at this meeting, but I know Mr. Sessel once or twice made the observation that in his opinion it would be normal for Mr. Hughes to try to stir up disagreements between different members of the board and create factions, each of which would distrust the other.

Q. You recall, do you not, that the request made of TWA was an opportunity to present certain information to members of the board and the voting trustees?

A. That's correct.

Q. At this point of the discussion weren't you discussing who was going to attend this Friday meeting, who ought to be there, and what effort was going to be made to have directors present distinguished from Technical people and the like?

A. No, I don't, Mr. Davis, and so far as I can recall, that [fol. 7855] wasn't a subject of discussion at this meeting, although possibly it might have been.

The subject that we were discussing here was, once again, the subject of whether to go ahead with the Boeing program and how to reconcile the going ahead with the Boeing program with the maintenance, so far as possible, have an open mind and ear to hear what you might have to say on the subject.

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[fol. 7871] Q. Let me refer you to the last sentence of Defendants' Exhibit 39, Mr. Tillinghast. Wasn't that intended to be an invitation to the Tool Company to present information to TWA with respect to the relative merits of the 990s vs. the Boeings?

A. I would so consider it, yes.

Q. Therefore, this presentation that was made on behalf of the Tool Company was not something which the Tool Company was forcing upon TWA, but was responding to an invitation, was it not.

[fol. 7872] A. Well, I wouldn't put it quite that way, Mr. Davis. You were busy stating that you had important things to say. I was taking the position that if you had important things to say it was your duty to step up and say them, and as a consequence we had a meeting.

Q. This letter of yours of May 29th was referring to this letter of May 26th, isn't that right?

A. Yes, that's correct. It speaks for itself in that regard.

Q. Yes, and insofar as the 990s are concerned, vs. the Boeing, what portion of this letter of May 26th, Defendants' Exhibit 11F, do you have in mind other than paragraph 2, which appears on page 8, which relates to this 990 vs. Boeing question?

A. I might say, Mr. Davis, if my memory serves me correctly, that this wasn't the only letter in receipt of which

I was at that time. I have a vague recollection, and the records would show, that there was another letter that had come in a little before this. Perhaps I am wrong on that, but I think that's right.

Q. But all the letters that you have in mind which you have described as constituting malicious or willful interference in the affairs of TWA you have identified previously on the record, have you not, Mr. Tillinghast?

[fol. 7873] A. Well, I went through a list of documents, Mr. Davis, and identified those which I thought constituted this sort of conduct.

Q. They were documents produced by your counsel?

A. They were.

Q. Wasn't it pursuant to my request that you identify all documents in your files which you categorized as being part of this willful or malicious interference in the affairs of TWA?

A. It was at your request that I did that.

Q. You don't have in mind today any different or other communication, have you?

A. Not at the moment, no.

The Special Master: I don't believe there is any pending question, Mr. Davis.

Mr. Davis: I believe so. I was asking whether or not in his letter of May 29th, Defendants' Exhibit 39, he referred to my letter of May 26, 1961, was there any portion of that letter other than what appears in paragraph 2 on page 8 of that letter relating to the 17 jet aircraft which he had in mind when he wrote that letter of May 29th. I think the record will show that that is the last question I had when he said he would like to refer to that letter of May [fol. 7874] 26th, which I furnished to him.

A. In answer to your question, Mr. Davis, the answer is yes. I am referring to the paragraph numbered 1, which begins in the bottom of page 5 and carries over to page 6, which says, among other things, "Toolco strenuously objects to any such commitment by TWA for several reasons, all of which may not be set forth in this letter." Continuing to quote, "basically, Toolco does not believe that such equip-

ment is best suited to the needs of TWA," and so forth and so forth.

I believe—

Q. "Particularly when TWA may acquire jet aircraft from Convair pursuant to arrangements heretofore made by Toolco for the benefit of TWA."

Mr. Sonnett: Let's read the rest of the paragraph, so long as you are doing it. Should I do it, or would you like to?

Mr. Davis: Let the witness do it.

Mr. Sonnett: I will do it to save his voice.

"Toolco does not understand how the board of directors may justify saddling TWA with long-term obligations or equipment contrary to the wishes of the owners of TWA, [fol. 7875] particularly when such equipment and obligations undoubtedly will extend beyond the terms of the voting trust."

A. I believe those are the things, Mr. Davis, as I remember it at the moment, that caused me to suggest that if you had any information bearing on this subject you should come forward and let us have it.

Q. In other words, when you were writing this letter to Mr. Holliday which contained the sentence:

"If you have any information bearing on the relative advantages to TWA of our purchasing Convair aircraft in place of the Boeing aircraft that is not available to us, I request that you furnish it to us promptly."

You had in mind what appears in paragraph 1 of this letter of May 26th, Defendants' Exhibit 11F, and what appears also in paragraph 2 of the same letter—that is the information you were asking the Hughes Tool Company to furnish you?

A. I don't believe it referred so much to paragraph 2.

Q. Primarily paragraph 1?

A. Primarily paragraph 1, and I still have the feeling, and I may be wrong in this, that orally or in some other means I was aware of the fact that you were asserting [fol. 7876] that you had a lot of information that we didn't have.

Q. At this Executive Committee meeting of May 31st did you tell those present that you had written a letter

on May 29, 1961 requesting that the Tool Company present relevant information?

A. I am sure that I discussed the fact, and indeed, I have already testified to that effect, that the Tool Company purportedly had some information which they were going to present to us on, I believe, the following Friday, and I have already testified at great length as to our discussion, my discussion of the problem that that raised.

Q. The question to you now, Mr. Tillinghast, is whether or not you disclosed at that meeting that on the 29th you had requested information from the Tool Company?

A. I am sure that it was disclosed in one form or another. Indeed, that was the whole reason for the discussion about which I have already testified at such length.

Q. Therefore, in that connection, did you indicate to those there present that a decision or a final decision should not be made until after this information had been pre-
[fol. 7877] sented to you?

A. I did not. I took exactly the opposite point of view, that I doubted that we were going to learn anything significant, and that the—we should proceed with our program on the 31st as planned.

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[fol. 9170] Q. What facts or assumptions were you making at that time that made you question the good faith of these proposals?

A. Well, I would have to go back, Mr. Davis, and start with the matters that began on the 12th of May, or indeed I would have to go back beyond that. I would have to go back to the fact that since I have become president, Mr. Holliday had been completely unavailable and unresponsive to my suggestion that we might sit down and discuss matters of common interest.

I refer to the fact that we had this proposal for a postponement of our rights offering, a proposal which in
[fol. 9171] my opinion was not a genuine proposal, but was aimed at delaying and impeding and interfering with our Boeing financing.

I had the fact to which I testified that Mr. Reed had advised me that you had told him that the matter of the

Boeing purchases was something that could not be compromised.

I had in mind the fact, and this goes back to your request for an adjournment, that you had told us in effect if we would postpone our offering as requested, you would waive and forget about what you considered serious deficiencies, and if I may paraphrase, a fraud on the public, in our registration statement.

I have in mind the fact that after talking a lot about Hughes Tool Company's desire to distribute its subordinate debentures to the public as soon as that ceased to be a possible tool for delaying our registration, Hughes Tool Company showed no interest whatever in following up on our proffered cooperation for a secondary offering which could have been done quite as quickly as the offering that the Tool Company purportedly was interested in.

I am referring to the fact that prior to this time the Tool Company had made a public statement that it was [fol. 9172] considering throwing onto the market its rights to purchase the subordinate debentures which had the effect of very, very seriously unsettling the market.

To my mind the high probability was that this letter which had been written by Mr. Holliday about things which he might have come in and talked with me about, if he were genuine, was a letter designed to put us on the spot, to interfere with the progress of our Boeing program and the financing thereof.

Q. Is that all?

A. That is all I remember at this time.

Q. Do you think you could remember more if you had more time?

A. Additional circumstances might occur to me later. I think that is quite enough to indicate that I had very serious ground for suspicion, and I guess I will have to add one more here that does occur to me at this time, and that is that Defendants' Exhibit 57 contained a statement which I considered to be false and known by Hughes Tool Company to be false, and that is that TWA was under an obligation to acquire the 990 aircraft.

Q. Now, do you think you have had an adequate amount of time to fully describe all the facts and assumptions that

underlie your feeling that the proposal set forth in Defen-
[fol. 9173] dants' Exhibit 56 were not being submitted in good faith?

A. I think I have recited enough circumstances, Mr. Davis, to provide a very clear and cogent reason for suspecting that this was not a genuine attempt to achieve an appropriate objective, but rather, an attempt to disrupt, divert and delay.

Q. At that time were you concerned with the possibility that the Tool Company might be able to carry out some of these proposals if accepted by TWA, and thereby avoid the necessity of this additional $150 million, more or less, of the 1961 financing?

A. No, I was not, Mr. Davis. I would have been very happy with any genuine program that would have brought substantial additional equity to TWA.

Q. Did you discuss these suspicions with anyone?

A. I am sure I did.

Q. Can you identify—

A. I am sure I discussed them with Mr. Rowe. I am sure I discussed them with Mr. Reed.

[fol. 9174] Q. And those were suspicions that you discussed with them following the receipt of this letter of June 10th?

A. Before and after the receipt of the letter of June 10th.

Q. You mean before you received the letter of June 10th you were suspicious of the lack of good faith of the proposals that might be contained in the letter of June 10th?

A. No, I am not saying that. I am saying that prior to June 10th I was suspicious of the Tool Company's motivations, and what they were seeking to accomplish. Prior to the receipt of this letter I had on several occasions discussed with Mr. Reed and Mr. Rowe and the directors of TWA what the Tool Company seemed to be seeking to accomplish.

I discussed the background against which this letter of June 10th appeared.

Q. And discussing with them what seemed to you the Tool Company was seeking to accomplish, what did you mean by that? The intention to terminate the voting trust?

A. No, the abortion of the Boeing equipment purchase.

[fol. 9175] Q. Did you discuss with them your fears or feelings with respect to any possible effort on the part of the Tool Company to terminate the voting trust?

A. If you mean to terminate it as set forth in your letter, your letter of May 16th, to the Securities and Exchange Commission, or May 17th—

Q. I believe you are referring to a May 19th letter, or you may be referring to a May 26th letter.

A. The letter you wrote to the SEC.

Q. May 19th.

A. You referred there to questions as to whether there were circumstances that entitled the Tool Company to terminate the voting trust.

That letter, and that much of the termination of the voting trust was discussed.

If you are talking about the re-financing of the situation, and the termination of the voting trust through refinancing the situation, the answer is that I do not recall ever having discussed that with the directors.

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[fol. 9247] By Mr. Davis:

Q. Mr. Holliday did attend a meeting of the board of directors on May 17th, did he not?

A. Yes, part of it.

Q. Do you recall if prior to that board meeting he had a private conversation with you, Mr. Breech?

A. No, he did not.

Q. Do you know whether he had a private conversation with Mr. Breech prior to that time?

A. Not that I recall. Quite possibly he did, but I don't recall it.

Q. When you saw Mr. Holliday on May 17th, that was not the first time you had seen Mr. Holliday, was it?

A. As I recall it, that was the second time, Mr. Davis. I think the first time I saw Mr. Holliday was at the board meeting on the 20th of March, at which I had appeared very briefly and been introduced to a whole group of people, including Mr. Holliday, and I believe the next time I saw [fol. 9248] Mr. Holliday was at the board meeting to which you have just referred.

Q. Referring to your testimony at page 3668, you say that "Mr. Holliday had been completely unavailable and unresponsive to my suggestion that we might sit down and discuss matters of common interest." That is your testimony there, Mr. Tillinghast?

A. Yes.

Q. Does this refer to the facts that you have described, your going to this board meeting on March 20th, meeting Mr. Holliday there, Mr. Holliday's sudden disappearance, and your not seeing Mr. Holliday again until May 17th?

Mr. Sonnett: Plus the letter that was written, and if you are going to summarize the testimony, summarize it accurately.

Q. What you have testified to date in its entirety, Mr. Tillinghast, that is what you mean by saying that Mr. Holliday "had been completely unavailable and unresponsive to my suggestion that we might sit down and discuss matters of common interest," is that correct?

A. Well, let me say, Mr. Davis, beginning with the 20th of March, which I have just described, and continuing then up until the time in June, the only time that I had [fol. 9249] seen Mr. Holliday, that Mr. Holliday had, to my knowledge, appeared at TWA, that Mr. Holliday had come to a directors meeting or stockholders meeting, was the occasion when he came to the meeting of May 17th, the circumstances of which have been covered, as I recall it, rather completely in the record.

Mr. Holliday had, at least as far as I was aware, indicated no interest whatever in coming in and discussing common problems. He had, let's say, been completely absent from the scene, and I could only assume that his absence from the scene was not accidental, but was due to a desire on his part, which, of course, was his prerogative, not to come in and sit down and become acquainted and seek, in a constructive way, to deal with our common problems.

Q. You met the board at the meeting held in March, which was March 20th?

A. That's correct.

Q. The next board meeting was the one which was held on April 27th?

A. That's right.

Q. The next meeting of the board after that was the one on May 17th?

[fol. 9250] A. That's right.

Q. And you actually took office when?

A. The 17th of April.

Q. April 17th?

A. Right.

Q. So that by June 10th you concluded that Mr. Holliday had been completely unavailable and unresponsive to your suggestion that you might sit down and discuss matters of common interest?

A. That was my view, yes.

Q. That is one of the matters which made you feel that this letter of June 10th was probably not sent in good faith?

A. That's correct, Mr. Davis, and I would want, if I may, to state further in that connection that it is my view that if Hughes Tool Company had had a real interest in a constructive solution to some of the problems that the most natural and proper thing in the world would have been for Mr. Holliday, who was a voting trustee and director of TWA, to come in, sit down, discuss the problem, try to deal with it as sensibly and dispassionately as possible.

[fol. 9251] When I received the letter in Mr. Holliday's name on a very complicated subject, which letter I am quite confident you prepared, suggesting that conversations be carried on not with Mr. Holliday but with yourself, it seemed to me that this was obviously a maneuver, a tactical move in a controversy rather than a genuine attempt to come to a solution to these problems and to accomplish the things that the letter tried to create the impression it was the purpose to accomplish.

Q. Prior to this meeting of May 17th do you recall the efforts of Mr. Holliday to sit down with you and Mr. Breech to discuss this public offering that the Tool Company was desirous of making?

A. No, I don't remember any attempts to sit down with me, Mr. Davis, at all.

Q. Were you unaware of the efforts made by Mr. Holliday, Mr. Bautzer, together with Mr. Forrester of Merrill Lynch, to sit down with you and Mr. Breech for the purpose of discussing the secondary offering?

A. I have no recollection of any attempt by Mr. Holliday or Mr. Bautzer to sit down with me. If Mr. Holliday had wanted to sit down with me my door would have been open to him any day he wanted to come in.

Q. You made no effort to contact Mr. Holliday except [fol. 9252] that one letter?

A. That's correct, other than what I testified before, my agreeing with Mr. Reed that I thought it would be a desirable thing to find an occasion to sit down with Mr. Holliday.

Q. Now let me refer you to page 3669 of the transcript of your testimony, Mr. Tillinghast, and you see at line 19 you said:

"Hughes Tool Company showed no interest whatever in following up on our proffered cooperation for a secondary offering . . . ," et cetera.

All I want at this time is for you to first identify what you refer to as your "proffered cooperation for a secondary offering." What are you referring to?

A. Well, I am referring to the fact that the first time I discussed this with Mr. Forrester I assured him that we would give every cooperation to the Tool Company and Merrill Lynch in any secondary offering that they might want to carry out. At the board meeting on the 17th of May the board formally took that position, and it is my recollection that whenever and whatever form the question came up, we said "We are ready to give you every coopera- [fol. 9253] tion that you want in effecting a secondary offering."

Q. Let's see if we can identify some facts, Mr. Tillinghast.

You say that statements were made to Mr. Forrester?

A. That's correct.

Q. Do you know by whom?

A. By me.

Q. Those were statements to the effect that in the future TWA would cooperate with Merrill Lynch in connection with any public offering of these income debentures that the Tool Company might receive?

A. Not in the future, at least in the sense that I think you are using it, Mr. Davis. Right now, and so far into the future as they might wish it.

Q. Would you describe or identify what you said to Mr. Forrester that makes you testify that you told him that TWA was prepared to cooperate "right now"?

A. Well, the conversation at the meeting on the 12th of May included a discussion of the possibility and the ease of stickering the prospectus and having a secondary offering right on the heels of the offering to shareholders, and as I recall it, it was principally the lawyers who were discussing the mechanics of it, but I personally told Mr. For-
[fol. 9254] rester that we would give them every cooperation that they might want in such an offering if they were interested in proceeding.

Q. Were you referring to cooperation for an offering that would come right on the heels of the TWA offering, or were you referring to cooperation that would develop right on the heels of the 1961 financing?

A. I was talking about one that would come right on the heels of the rights offering of the subordinated debentures.

Q. At that time, though, you were claiming, were you not, it was your position, that this rights offering by TWA could not be delayed or postponed because it jeopardized the 1961 financing?

A. It was.

Q. So weren't you telling Mr. Forrester, in effect, that the cooperation you were prepared to give was only to follow the 1961 financing? That is the reason why you were not willing to delay it otherwise, isn't it?

A. No, Mr. Davis, that is quite wrong. So far as I recall, an offering, secondary offering by the Tool Company, so long as it didn't delay the offering of our sub-
[fol. 9255] ordinate debentures, wouldn't have been any problem at all in connection with the 1961 financing. The two things could have gone along simultaneously without any problem whatsoever.

Q. What was the problem in having the TWA offering simultaneously with the Tool Company's offering?

A. The problem was simply this, Mr. Davis, one of delay, and I have been over this time and time again—

Q. Delay of what, Mr. Tillinghast?

A. The delay of the completion of our offering of the subordinate debentures and the possible effect of that on the firming up of our 1961 financing, concerning which I have testified already at the greatest of length.

Q. Still referring you to page 3669, the bottom of that page, you state, as one of the facts which made you feel that the Tool Company's offer of June 10th was not made in good faith, that "The Tool Company had made a public statement that it was considering throwing on the market its rights to purchase the subordinate debentures which had the effect of very, very seriously unsettling the market."

What public statement of the Tool Company are you referring to, Mr. Tillinghast?

[fol. 9256] A. As I recall it, Mr. Davis—I am a little fuzzy as to the detail—the Tool Company made a statement I believe to the Stock Exchange—

Q. I think you are right.

A. (Continuing) —that it might sell all or part of its rights.

Q. What else do you know about the events relating to the statement made by Hughes Tool Company to the New York Stock Exchange?

A. I am not sure, Mr. Davis, that I know much beyond that.

Q. Do you know whether or not TWA had made an effort to obtain trading prices on the New York Stock Exchange with respect to those rights?

A. Yes, I know that we made an attempt, and we did list them for trading.

Q. Don't you know as a fact that the New York Stock Exchange insisted that the Tool Company make a statement to the Exchange as to its intention with respect to the very substantial amount of rights it was to receive as a condition to the granting of trading prices on the Exchange?

A. I think that is very possible, yes. I think that's correct.

[fol. 9257] Q. It is more than possible; you were told that, were you not?

A. Well, I am not sure I was told that, Mr. Davis, but I think that's correct, yes.

Q. Your testimony at the bottom of page 3669 refers to the statement made by Hughes Tool Company to the New York Stock Exchange pursuant to their request, is that correct?

A. That's right.

Q. Is that correct?

A. That's correct.

Q. That is one of the facts that you consider indicated the probable lack of good faith by Hughes Tool Company when it made its offer of June 10th?

A. Yes, the fact that the Hughes Tool Company gave the impression that it might sell its rights when in fact it didn't, and I suspected never had any intention of doing so.

Q. What is the basis for your "suspecting that it never had any intention of selling any of its rights"?

A. Well, I am not sure, other than just a conclusion that I came to in the light of all the circumstances that existed at the time.

Q. What circumstances existed at the time which led [fol. 9258] you to that conclusion, Mr. Tillinghast?

A. Well, Mr. Davis, I would have to go back and repeat everything I have testified to as to the things that had been happening.

Q. No, Mr. Tillinghast, I don't think it is necessary to do that. I am merely asking you to identify the facts or circumstances which made you conclude that the Tool Company had no intention of selling any of its rights.

Mr. Sonnett: Mr. Rankin, may I object to the question unless it is understood that the witness is being asked only if there is any fact or circumstance which he has not previously testified to which bears on the question. He has just said everything that happened up to that date was what he based his conclusion on.

Mr. Davis: No, Mr. Rankin, I don't think that that would be satisfactory for me. This witness, who presum-

ably understands how to reach a conclusion like a rational person, has just testified that in his opinion he reached a conclusion that the statement made by the Hughes Tool Company to the New York Stock Exchange was false or misleading, and that in fact the Tool Company did not [fol. 9259] have any intention to sell any of those rights.

I believe I am entitled to discover at this point what facts or circumstances, which facts and circumstances, this witness is relying upon, what he has been told by anyone, what he believed to be true, which justifies such a conclusion.

Mr. Sonnett: He has already testified everything that happened up to that time is what he based his conclusion on. Does Mr. Davis want an argument, or does he want information?

The Special Master: Mr. Davis, you are not asking for a repetition of his testimony up to date, are you?

Mr. Davis: No, I am not asking him for repetition of testimony up to date, but I want him to identify, without repeating, whatever fact it is that he claims supported his conclusion as a rational human being.

The Witness: Mr.—

Mr. Sonnett: Just a minute, Mr. Tillinghast. I think that makes it perfectly obvious that what counsel is trying to do is argue. He is not engaged in discovery. [fol. 9260] He wants to argue with the witness. The witness has said that all of the facts concerning which he has fully testified are what led him to his conclusion.

Mr. Davis would like to sit and waste time here debating that, and I don't think it is proper as to form, and I am certainly clear that under no circumstances should he be allowed to waste time by requiring the witness to testify as to all events that preceded the formulation of this conclusion, concerning which he has fully testified.

The Special Master: The witness may answer as to anything additional, if there is anything that he has not already testified to, as the basis for his conclusion.

The Witness: I would say in addition to what I have already testified to, Mr. Special Master, the one thing I might say is that in fact the Hughes Tool Company hadn't

taken any steps actually to sell its rights, did not take any steps actually to sell its rights, and the fact that I was under the impression that the Hughes Tool Company was not likely, at that point, to dilute its percentage interest.

[fol. 9261] By Mr. Davis:

Q. What were the facts that gave you the impression that the Tool Company was not likely to dilute its percentage interest?

A. As best I can recall, Mr. Davis, a conversation with Mr. Leslie. I recall, and it is not very sharp in my mind, that Mr. Leslie—that I discussed briefly with Mr. Leslie the question of whether he thought the Tool Company actually would sell their rights, and he expressed a negative opinion.

Q. You said that the Tool Company took no steps to sell its rights. Are you aware of the effort that was made by the Tool Company to get the voting trustees to transfer the rights from the voting trustees to the Tool Company so they could be saleable?

A. Not at the moment.

Q. You mean Mr. Rowe did not tell you, Mr. Reed did not tell you, no one told you, that the Tool Company wrote letters, made an effort to have the rights which were issued to the stockholders of record, namely, the voting trustees, transferred to the Tool Company?

A. I don't remember any problem of that sort, Mr. Davis.

[fol. 9262] Q. I am not talking about a problem. I am asking you if you do not know that in fact it was done.

A. You mean that the rights were transferred so that they [redacted] be salable?

Q. That the Tool Company requested the voting trustees to transfer the rights to the Tool Company.

A. Mr. Davis, I don't distinctly recall it. I do recall that there was some question of getting the rights in the right name, but I don't—it doesn't stick clearly in my mind as to just what the problem was, and I don't recognize it in terms of what you say.

Q. In what terms do you recognize it?

A. Well, it is very fuzzy in my mind, but I do remember that there was some problem—I thought it was the other way around—that the voting trustees had in getting some transfer or—in getting the Hughes Tool Company to transfer something so as to put them in a position so that these could be listed with the Stock Exchange. I am sorry. It is very fuzzy in my mind. I can't remember just what it was. But I remember there was a—some problem of that sort. But I don't recognize the problem that you apparently are referring to now.

Q. Mr. Tillinghast, don't you know to whom the rights [fol. 9263] were issued?

A. The rights were issued to the voting trustees.

Q. Because they were the stockholders of record?

A. That's right.

Q. Until the voting trustees transferred those rights from themselves to the Tool Company the Tool Company could not sell them, could it? Isn't that self-evident to you?

A. Well, I am not sure, Mr. Davis, whether that is so or not. I don't know just what steps would have to be gone through in order to put the Tool Company in a position to sell them.

Mr. Davis: In order to permit me to continue with the witness at this point, I would like to refer to this document, Mr. Special Master, but our duplicating facilities haven't caught up with me.

I will have it marked, just this one copy, as Defendants' Exhibit 60.

(Photostatic copy of letter dated May 26, 1961, to New York Stock Exchange, from Raymond M. Holliday, consisting of two pages, marked Defendants' Exhibit 60 for identification as of this date.)

[fol. 9264] By Mr. Davis:

Q. Defendants' Exhibit 60, Mr. Tillinghast, was produced by you. There is at the lower right-hand corner the following: "May 29, 1961, president's office."

Since I do not have extra copies of this now, let me read that letter into the record.

A. May I look at it?

Q. Certainly (handing to witness).

Mr. Sonnett: That will simplify matters, I think.

Q. You see that letter?

A. I see the letter, yes.

Q. That was in your files, was it not?

A. Apparently, yes.

Q. This is a letter by Mr. Holliday to the New York Stock Exchange?

A. Yes.

Q. Can you explain how that letter got into your files?

A. Not at this point, no. I presume somebody sent me a copy of it.

Q. You don't know who?

A. At this point, I don't, Mr. Davis.

[fol. 9265] Q. You notice it is dated May 26th?

A. I do.

Q. You see the second paragraph, which reads:

"This is to inform you that we did not know until approximately 2:30 this afternoon whether we would be able to make arrangements with the voting trustees of TWA common stock beneficially owned by Hughes Tool Company and L. A. Church & Company, the registered holder of the voting trust certificates, to receive these rights."

A. I see that.

Q. You were aware of that then, weren't you, Mr. Tillinghast?

A. I undoubtedly, if this came through my office, read it at that time.

Q. There is no doubt that it went through your office, is there?

A. No, I don't think so, Mr. Davis.

Q. Do you recall the offering period that TWA fixed for the exercise of those rights?

A. As I recall it, it was 15 days.

Q. Are you sure about that?

A. No, I am not. I think it was about 15 days. That figure sticks in my mind. But I would have to check it. [fol. 9266] It is very easily ascertainable.

Q. Do you also recall whether or not it went over a holiday weekend? Do you know how many trading days there were available for those rights?

A. Well, I am not sure at this point. If the total period was 15—well, I would have to, Mr. Davis, recall, and I don't recall whether the Exchange was open on the 29th of May, which was the day before Memorial Day, or whether it was closed that day, but if it was open that day, there would have been approximately 11.

Q. Is that your recollection?

A. Well, I have no independent recollection, Mr. Davis, just how many trading days—

Q. Do you have any recollection as to whether or not you gave any consideration as to what would be a reasonable or fair or appropriate period of time for those stockholders to trade in those rights?

A. I personally did not, Mr. Davis.

Q. Do you know who did?

A. Well, the people who were arranging the offering.

Q. Who are you referring to, Dillon, Read?

A. Dillon, Read, Mr. Leslie, Mr. Rowe, the people who [fol. 9267] had this in charge.

Q. And you did not give that matter any personal consideration?

A. No. The matter of the length of the trading period I gave—the period in which to exercise rights, I don't recall I gave any consideration whatever.

Q. At page 3670 of your testimony, Mr. Tillinghast, you testified that as a result of the advice that the Tool Company gave to the New York Stock Exchange pursuant to their request, you say, "Which had the effect of very, very seriously unsettling the market."

You see that?

A. Yes, I do.

Q. Now will you describe the facts which you describe as having had a very, very serious unsettling effect on the market?

A. Well, as I recall it, Mr. Davis, somebody, I think it was Mr. Wadsworth, possibly it may have been Mr. Leslie, but I think it was Mr. Wadsworth, said that they were very

concerned about the situation, that people who were making the market in these rights were extremely concerned that the Tool Company might dump great quantities of rights on the market and leave those who were making the market [fol. 9268] in a very bad position, and my recollection is that these rights opened at a very substantial value, and by the end of the exercise period had gone to practically nothing, and my impression was that a major cause of this had been the uncertainty as to whether the Tool Company was or wasn't going to dump onto the market a great number of rights.

Mr. Davis: May I have that answer read to me now, please?

The Special Master: You may.

(The answer was read.)

Q. When did this somebody tell you this, Mr. Tillinghast?

A. Well, my recollection is, Mr. Davis, it was at some point after the Tool Company had taken the position that it might sell all or part of its rights.

Q. Some time after May 26th?

A. Yes. It seems to me—

Q. That letter to the Exchange was dated May 26th, wasn't it?

Mr. Sonnett: That didn't say you had made a decision. If you had read the balance of the paragraph it would have been clear.

A. Well, at this point, Mr. Davis, I am not altogether [fol. 9269] clear whether that is the only letter, or whether there was a subsequent letter.

Q. But it was something said to you during this offering period?

A. That's correct.

Q. You think it was Mr. Wadsworth?

A. I think it was Mr. Wadsworth, but it might have been Mr. Leslie.

Q. Do you recall the occasion for this information?

A. No; I don't recall the occasion. I have been trying to think here exactly what the occasion was, but I don't recall the specific occasion.

Q. Do you recall his saying something about the length of the offering period in connection with this problem?

A. No, I do not.

Q. Who were the people "making a market in those rights"?

A. I can't tell you who the specific people were.

Q. Describe them for me. What did Mr. Wadsworth or that somebody tell you?

A. I don't think he told me anything, other than to refer to them as the people making the market in the rights.

[fol. 9270] Q. Do you know of a very substantial number of rights that were "sold on the market" by the Dreyfus Fund?

A. No, I am not familiar with that.

Q. Do you identify that sale as marking the moment from which those rights began to drop in market price fairly rapidly?

A. I am not familiar with that, Mr. Davis.

Q. Did Mr. Wadsworth discuss with you the problem that is inherent when a very substantial amount of securities have to be disposed of in a relatively very short period of time?

A. Not in this connection.

Q. What do you recall about what was said to you apart from these conclusions that somebody told you that some people, unidentified, were making a market and were concerned?

Mr. Sonnett: I think this is obviously argumentative. If he wants to know whether the witness recalls anything more than he has testified to he can ask it.

Mr. Davis: Mr. Special Master, may I point out that this complaint specifically alleges that the Tool Company inter-

[fol. 9271] fered with the subordinated debenture offering.

The Special Master: I overrule the objection. He has a right to ask whatever he was told, what he can recall about it.

Mr. Sonnett: I have no problem with that, Mr. Rankin, but I thought the witness already testified to that once, or several times. It calls for a repetition of that. It would be the third time.

The Special Master: If there is anything further—

The Witness: There is nothing further that I recall at this time.

By Mr. Davis:

Q. Is that the entire testimony you care to give as a basis for your testimony that this had the effect of very, very seriously unsettling the market?

A. Yes.

I have testified, Mr. Davis, as fully as I can recall as to the circumstances relating to the unsettling of the subordinate debenture—

Q. In other words, what you have testified to is your complete testimony as to all the facts and circumstances which [fol. 9272] justify or support your testimony at the bottom of page 3669 and the top of 3670?

Mr. Sonnett: If that question is to be understood by its literal meaning, I have no objection to it.

If Mr. Davis is trying to exclude the witness' testimony as to all the prior history in this question, I do object. It is argumentative.

The Special Master: We have a right to assume the question shall be taken literally unless it is otherwise directed.

The Witness: Excuse me. Would you read back the page reference? I just want to be sure.

(The question was read.)

A. Yes, Mr. Davis, I have testified to everything that I can presently recall that bears on the statement contained or the statement referred to in your question.

[fol. 9273] Q. You testified, Mr. Tillinghast, that these rights opened strong?

A. Yes.

Q. And then weakened in price?

A. Yes.

Q. Fairly suddenly?

A. Well, rather steeply, as I recall it.

Q. You also testified that to your knowledge the Tool Company made no effort to sell any of those rights, is that correct?

A. That's correct.

Q. Is it also a fact, Mr. Tillinghast, that when those rights opened on the New York Stock Exchange the public statement to which you referred had already been made by the Tool Company?

A. That is not my recollection, Mr. Davis.

Q. Isn't it a fact, Mr. Tillinghast, that the New York Stock Exchange insisted on a statement by the Tool Company before they would admit the rights to trading? You testified to that a moment ago, didn't you?

A. Mr. Davis, I am just not sure of that. My recollection, and maybe I am wrong in my time, but my recollection is that it was somewhere in the—during the rights period that [fol. 9274] I, at least, became aware that the Tool Company had taken this position.

Q. You are quite right about during the period of the rights period, Mr. Tillinghast. We are talking about the trading, the market price of those rights, which is not the same period.

Isn't it a fact that there was a delay between the opening of the rights period and obtaining trading privileges on the New York Stock Exchange?

A. I just have to say I don't remember, Mr. Davis. The facts will show what the situation was.

Q. I am trying to establish the facts, Mr. Tillinghast.

Mr. Sonnett: The witness has said he doesn't remember. I think if counsel has a question he ought to put it.

The Special Master: Yes.

Mr. Davis: I am trying to save time, Mr. Special Master, because, to be sure, I can establish those facts in a lengthy, laborious manner, which would be simplified if the witness could be joggled memory-wise so as to admit a fact which admittedly is relatively easily provable, except I need it as a foundation.

[fol. 9275] The Special Master: I will let you exhaust his recollection, Mr. Davis, but when he says he doesn't recollect, unless you can give him something to refresh his memory, then we reach the end of the road.

By Mr. Davis:

Q. Let me refer you to—

Mr. Bromley: It would help me a great deal, Mr. Special Master, if Mr. Davis will tell me whether the public statement by Toolco that he keeps referring to is Exhibit 60 or something else.

Mr. Davis: I am referring to the testimony of Mr. Tillinghast, Judge Bromley, which appears at the bottom of page 3669 of the transcript.

Mr. Bromley: You keep referring to Toolco's public statement. What is that?

Mr. Davis: That is what the witness testified to, and he has testified to a statement made by the Tool Company to the New York Stock Exchange. That is the testimony so far.

The Special Master: Is that clear, Judge?

Mr. Bromley: No.

The Special Master: Look at page 3669, the bottom of [fol. 9276] the page there.

Mr. Bromley: All I wanted to do was to get the Toolco public statement. I know what the witness said.

Mr. Davis: If you will look at the letter that I have marked for identification as Defendants' Exhibit 60, Judge Bromley—

Mr. Bromley: I have looked at it, Mister, and all I asked you was is that the public statement that you keep referring to.

Mr. Davis: I am referring to the public statement that the witness is referring to.

Mr. Bromley: Then you are not referring to Exhibit 60?

Mr. Davis: We are trying to establish what the witness is referring to.

Mr. Bromley: Exhibit 60 doesn't say anything like you say it does.

Mr. Davis: The witness has testified, as I recall it—I will establish it on the record again, if you please.

By Mr. Davis:

Q. At the bottom of page 3669, you testified to a public statement, and my question to you now, Mr. Tillinghast, [fol. 9277] is whether or not you were referring to the statement made by the Hughes Tool Company to the New York Stock Exchange, or are you referring to something else?

A. Well, I am referring, Mr. Davis, I think, to a statement that appeared—

Mr. Sonnett: Off the record.

(Discussion off the record.)

Mr. Davis: Where are we?

(The record was read.)

A. (Continuing)—in the wire services, and perhaps in the press, that was based on the statement made by the Hughes Tool Company to the New York Stock Exchange.

Q. Is it your understanding, Mr. Tillinghast, it was that statement to the New York Stock Exchange which appeared subsequently in the press which the Exchange required as a condition to permitting trading in the rights?

A. I am not altogether clear, Mr. Davis, whether or not this statement was a statement required by the New York Stock Exchange. I think it very likely was, but I am not sure.

Q. In any event, you were informed, were you not, that [fol. 9278] in order to permit the rights to be traded on the Exchange it was necessary for the Tool Company to make a statement of some kind to the Exchange?

A. I am not sure that I was advised of that. Very possibly I was, but I can't remember any specific advice at this point.

Q. Are you clear that the trading of those rights on the Exchange is an event which occurred after the beginning of the right period?

A. I am not clear at this point as to these dates, Mr. Davis. They are very easily established, but I don't at this point have them in mind.

Mr. Sonnett: While we are waiting, Mr. Rankin, for Mr. Davis to commence his next question, may I inquire through you whether the Hughes Tool Company has produced in the production which commenced March 15th any and all copies of drafts and/or actual press releases or statements to the press on the subject Mr. Davis is now examining about?

I see, for example, in one of these clippings, the Kansas City Star of June 2nd, a statement that the Hughes Tool [fol. 9279] Company, which will receive the stamped rights, has notified the Stock Exchange that it intends to sell the rights it received up to an amount which will depend on market conditions but in an amount not to exceed 85 per cent of its holdings.

I would like to know whether they have produced any statements they made to the press in this connection. We can save an awful lot of time if they have.

The Special Master: Mr. Davis, do you know whether that has been produced?

Mr. Davis: I am quite confident that there are no press releases with respect to the subject matter we are now discussing, because this was handled through my office, and I think I can satisfy the inquiry, really Judge Bromley's inquiry, by marking and producing at this time the letter by the Hughes Tool Company to the New York Stock Exchange which released the publicity. I can state on the record the Hughes Tool Company did not issue any publicity whatever with respect to its intentions as to these rights.

Mr. Sonnett: Did its public relations representatives do [fol. 9280] so?

Mr. Davis: No, no one.

Mr. Sonnett: I notice the press quotes a public relations representative who apparently was informing the press about Mr. Davis' views on various subjects.

Mr. Davis: You are making a statement which I do not believe is accurate.

Mr. Sonnett: You should read the newspapers—

Mr. Davis: I know, but I am not like Mr. Tillinghast, Mr. Sonnett.

Mr. Sonnett: Much to my regret, I suspect to many others, that you are not.

Mr. Davis: I deal in facts, Mr. Sonnett.

Mr. Sonnett: Good. Let's start.

Mr. Davis: Will you mark this as Defendants' Exhibit 61.

(Copy of letter dated May 31, 1961, to New York Stock Exchange, from Hughes Tool Company, marked Defendants' Exhibit 61 for identification, as of this date.)

Mr. Davis: If we may take the morning recess now, I may have both this exhibit and the other one reproduced, [fol. 9281] and we will—

The Special Master: All right. Let's take a short recess.

(Whereupon, a short recess was taken.)

Mr. Davis: While we are waiting for more reproduction to take place, Mr. Special Master, it is my recollection that yesterday Mr. Sonnett, in connection with the production of documents from Mr. Breech's files, also produced a list of documents which had been withdrawn on the ground that privilege was being asserted. As I understand it, it was a privilege being asserted by counsel for Mr. Breech.

The Special Master: That was my understanding.

Mr. Davis: We don't seem to be able to locate that document. I believe it was produced as one sheet and was to be reproduced by somebody.

Mr. Sonnett: I am sure we can get you another copy. Had Mr. Cox asked Mr. Ordover, you would have had it, and saved a page of the record.

Mr. Davis: It was marked, as I recall, as an exhibit, and I was wondering if perhaps the Special Master picked it up. [fol. 9282] The Special Master: I could have.

Mr. Davis: Or perhaps Mr. Tillinghast.

The Witness: No, I did not.

Mr. Davis: Thank you. I have just been handed a photostatic copy.

The Special Master: I have these, but those don't seem to be what you are talking about (handing to counsel).

Mr. Davis: No (handing to Special Master).

Mr. Special Master, prior to the recess I made a statement on the record that the Hughes Tool Company had not

issued any publicity with respect to its intentions as to the rights. That statement is correct, but requires additional explanation.

As previously indicated, the letter to the Exchange, dated May 31, 1961, which has been marked as Defendants' Exhibit 61, closed by saying that it "was authorized to release publicity to the above effect."

I was told, and as I recall, that the Exchange had communicated with Mr. Settles, who was then associated with me, and stated that the Exchange had no facilities for re-
[fol. 9283] leasing the information to the press, that the information should be released to the public, and Mr. Sessel at that point—

The Witness: Mr. Settles.

Mr. Davis: (Continuing)—Mr. Settles at that point dictated a press release which is entitled "Press Release from Chester C. Davis, Counsel for Hughes Tool Company," and I would like to make that explanation on the record. I would like to mark those for identification, and produce them at this time.

Mark them as Defendants' Exhibits 62A and 62B.

(Photostatic copy of press release from Chester C. Davis, counsel for Hughes Tool Company, as dictated May 31, 1961, marked Defendants' Exhibit 62A for identification, as of this date.)

(Photostatic copy of press release from Chester C. Davis, counsel for Hughes Tool Company, as dictated May 31, 1961, marked Defendants' Exhibit 62B for identification, as of this date.)

Mr. Davis: At this point, Mr. Special Master, I have the necessary copies of Defendants' Exhibit 62, which I am making available to opposing counsel.

[fol. 9284] I also have at this time additional copies of Defendants' Exhibit 60, which I am making available to opposing counsel.

By Mr. Davis:

Q. Now, Mr. Tillinghast, let me hand you Defendants' Exhibit 61, which is a letter from the Hughes Tool Com-

pany to the New York Stock Exchange, and let me hand you Defendants' Exhibit 62A and B, which constitute the statements to the press pursuant to the arrangements made with the New York Stock Exchange, and let me ask you if those are the public statements by Hughes Tool Company which you had in mind and referred to in your testimony beginning at the bottom of page 3669 and continuing to the top of page 3670 (handing to witness).

A. Yes, they are, Mr. Davis. If you had disclosed these before we would have saved an awful lot of time.

Mr. Davis: Mr. Special Master, I don't appreciate that remark by the witness. After all, he is the one who is testifying, and presumably who knows what is the factual basis for his wholly unwarranted assertions that the Hughes Tool Company was not acting in good faith.

[fol. 9285] Mr. Sonnett: Can we get on with the deposition, Mr. Rankin? I appreciate, in behalf of TWA, the production of these documents now.

May I ask, since Mr. Davis has seen fit to produce them now, that any other statements to the press put out by his office like these also be produced at their early convenience.

The Special Master: I assume that has been done in the production, so far as they are known.

With regard to the witness' remarks, the questions were inquiries as to his recollection, and there is no obligation on the part of counsel to furnish information to him to try to have him recall. Insofar as you can produce anything that may help his recollection, when we reach the end of his recollection, it does help us to advance the depositions. But you have a right to do that as you progress with your examination in your own manner.

Mr. Davis: May I point out also, Mr. Special Master, that these documents—I will withdraw the remark.

By Mr. Davis:

Q. Mr. Tillinghast, will you now please tell us when the [fol. 9286] material reflected by Defendants' Exhibits 61 and 62A and B first came to your attention?

A. I don't recall, Mr. Davis, that I have ever seen 62A and 62B before.

I believe I have seen or at least been aware of the existence of Exhibit 61. I am reasonably certain that the fact that such a letter had been written came to my attention within a day or two of the time it was written.

Q. In other words, you have a recollection that the letter by the Hughes Tool Company to the New York Stock Exchange came to your attention, or the substance of it?

A. The fact that the Hughes Tool Company had made the statement which is embodied in Exhibit 61 came to my attention very shortly after it was made.

Q. But referring to Defendants' Exhibit 62A and 62B, you never saw those before, did you?

A. I have no recollection of having seen them before, Mr. Davis.

Q. Now will you explain what were the public statements which you had in mind on June 10, 1961, which led you to conclude that those public statements justified a conclusion [fol. 9287] that the Tool Company was not acting in good faith?

A. Well, I am not sure, Mr. Davis, where the date June 10th comes from in your question. If your question refers to the period from June 12th, when I received your letter of June 10th, to June 16th, when I answered it, I would say the substance of May—of the letter of May 31, 1961, Defendants' Exhibit 61, and the publicity in the press and the wire services springing from that, were the circumstances which I had in mind.

Q. Will you identify, either by referring to Defendants' Exhibit 62A or 62B, or from the publicity which you recall having seen, the part or portions thereof which led you to conclude that those were public statements not made in good faith?

A. Well, I don't refer—strike that.

I don't come to the conclusion—to that conclusion just within the four corners of the document, Mr. Davis. The statement to which I refer is a statement that Hughes Tool Company intends to sell rights received by it up to an amount which under no circumstances will exceed 85 per cent of such rights.

Q. Yes?

[fol. 9288] A. That is the statement to which I refer. The fact that they weren't offered, and the other many facts to which I have already testified, were what led me to conclude that this was a statement not made in good faith.

Mr. Sonnett: If that is the end of the answer, and before there is another question, and in the interests of avoiding any confusion, may I ask, Mr. Davis, whether the reference in Exhibit 62A in the first two lines, reading, "The following is an excerpt of a letter to the New York Stock Exchange from the Hughes Tool Company," is a reference to the letter a copy of which is Exhibit 61, or is there some other letter?

Mr. Davis: My recollection of the events, Mr. Sonnett, if it will assist you in any way, is that Mr. Settles originally sent a letter to the New York Stock Exchange for the purpose of permitting the issuance by the Exchange of whatever publicity was required or they deemed desirable, and then he was informed they did not have the facilities, could not do it themselves, and expected that information to be [fol. 9289] made available to the press directly, and that is what Mr. Settles did.

I do not know at the moment of any other letter to the Exchange by my office on this subject other than the ones which I have marked for identification.

Mr. Sonnett: May I invite to the attention of the Special Master, because I am loath to make such grave charges until the record is perfectly clear, that on the basis of the statement that counsel has just made the press release is a false release.

If the Special Master will look at the second and last sentence in the second paragraph of Exhibt 61, and look at what is represented in the press release to be a copy of that sentence, the Special Master will note a highly material change. So the statement in the press release that the following is an excerpt of a letter to the New York Stock Exchange from the Hughes Tool Company is false, and I think the record ought to reflect that fact here and now.

Mr. Davis: The statement of Mr. Sonnett, as usual, is [fol. 9290] not completely accurate, but whenever it is the turn for Mr. Sonnett or TWA to establish any facts that they care to establish, I would have no objection to their doing so.

At the moment I do object, Mr. Special Master, to this continuous interference with my efforts to discover the facts that I wish to develop.

I have attempted to cooperate, primarily because of suggestions made by the Special Master, in furnishing information to TWA and its counsel out of turn. But it is perfectly apparent that counsel for TWA is either trying to establish precedence or a course of conduct which I consider as materially interfering with the efforts of the Tool Company to conduct its discovery proceedings in an orderly manner.

[fol. 9291] The Special Master: Mr. Davis, I think the remarks at this point may be well taken in light of that language. I am not saying it was intentional, but it says Hughes Tool Company does, however, intend to make such an offering in the press release, and the letter says intends to consider the desirability. I think that is the point that is being raised.

Mr. Davis: The point I am raising, Mr. Special Master, let us assume for the purpose of this discussion that something very wrong has been done by the Hughes Tool Company, my point is that the time to develop those facts is not now. This is not the time where TWA is attempting to discover what took place or did not take place to support their contentions. This is the time when I am trying to discover the facts from TWA.

This is a contention which undoubtedly requires an explanation. But my point is that if every time TWA or its counsel feels that it is appropriate or helpful to whatever strategy he may be undertaking at a particular time to open up and inquire into what the Tool Company did or did not do it is interfering with my discovery proceedings.

[fol. 9292] I am not prepared at this time to develop the facts as to what the Tool Company in fact did, other than to develop the facts in the possession of TWA and of this witness with respect to what they did.

I was perfectly willing, in a gesture of cooperation, although I do not believe that I was required to, to identify on the record these documents at this time, leaving aside for the moment the question as to the requirement of producing those documents to TWA for whatever use they wish to make of them when their turn comes.

The point that I am making now, Mr. Rankin, is that if I am going to be required to pursue this I am not pursuing my discovery proceedings.

The Special Master: I think your point is well taken, except for the problem, Mr. Davis, that counsel inquires as to whether there is any other letter that might explain the difference in light of the fact that these are being used to refresh the memory of the witness, insofar as they might refresh—

[fol. 9293] Mr. Davis: Mr. Rankin, again, these were not produced for that purpose.

The witness testified he had never seen them.

They did not come out of TWA's files. If they had been in TWA's files, they were producible, at least to the same extent they were producible out of mine.

Therefore, they are not documents which have been produced for the purpose of refreshing Mr. Tillinghast's memory with respect to what he had in mind at the time about which I was inquiring of him.

They were produced, again, primarily in the expectation that if I did I would no longer have Mr. Sonnett interfering with my deposition.

I thought that was the quick way of doing it.

Now it develops that having done so, he would like to pursue the matter further, and my point simply is that whether or not they were producible or not producible, I have no objection to producing them, they can have them, and they can do with them what they want.

But I am seriously objecting to being required to pursue [fol. 9294] lines of inquiry which occur to Mr. Sonnett from time to time.

The Special Master: I recognize the soundness of your objection generally, but I think that the record shows that you did ask the witness if he had any recollection as to these particular documents, and he said he didn't, but you made such an inquiry as to 62A and B, as I recall the record—

Mr. Davis: That's correct.

The Special Master: (Continuing) —and as to 61, he had a recollection that he had actually received a copy,

or at least it had been called to his attention, and presumably had a copy in his files. So to that extent you were inquiring into his memory and recollection, and whether or not those documents would refresh his recollection.

Whether or not you knew at the time that he never knew anything about 62A or B, I couldn't tell from the record until the answer was given, and just what approach you were making.

I don't intend to let an interference be made with the proper conduct of your examination. But I think the inquiry at this time as to whether or not there was some [fol. 9295] other letter was a reasonable one that would occur to any of us. You don't have to follow that up by supplying such at this time.

Mr. Davis: I have no particular objection to developing the facts, but it seems to me that either we are going to conduct discovery proceedings where each side takes its turn in developing the facts, or we are going to try to develop the facts jointly.

Mr. Sonnett: I would like to be heard, Mr. Rankin, on the question of the obligation of Hughes Tool Company and its counsel to produce from Mr. Davis' files any statements that he issued to the press or communications of this type.

You inquired yesterday about whether this was a Hughes Tool Company office or a Chester Davis office. We were in this matter of production of documents that might be located here.

I don't know that it is the proper function of counsel to be issuing press releases to the Daily Mirror and the other [fol. 9296] list of press associations appearing on Exhibit 62A. But counsel having done so, it seems to me that the documents in question are Hughes Tool documents that should have been produced.

It so happens that 62A and 61 taken together constitute, in my opinion, very significant evidence tending to establish in a very material way an important allegation of TWA's complaint. I should have had that evidence when they produced the documents of Hughes Tool Company, and Mr. Davis shouldn't feed it out piecemeal, whether he is trying to refresh the recollection of a witness or not.

One of two things is true here. Either they made a false statement to the Stock Exchange or they made a false statement to the press of the United States, and I intend to explore that very thoroughly, and I am entitled to have any press releases they put out.

The Special Master: You may proceed, Mr. Davis, with your examination of the witness.

By Mr. Davis:

Q. Mr. Tillinghast, do you know whether or not—

Mr. Bromley: Wait a minute. Before you proceed, I [fol. 9297] think the record ought to show right now, in connection with Mr. Sonnett's remarks, that neither Exhibit 62A nor 62B is a true and correct copy of Exhibit 61. They are quite different, and substantially different.

All you have to do is compare them to find out that the statement in 62A and B is not at all what is said in Exhibit 61.

The Special Master: It doesn't require your speech to establish that fact. Anybody can compare them.

Mr. Bromley: Nobody has compared them, and why should this record go on the assumption that they are accurate quotes when they aren't?

The Special Master: I have already compared them, and said in the record the difference.

Mr. Bromley: Said the difference?

The Special Master: Yes.

Mr. Bromley: You haven't at all, sir.

The Special Master: I am sorry. I beg your pardon. Look in the record.

Mr. Bromley: What?

The Special Master: You look in the record when you receive it.

[fol. 9298] Mr. Bromley: You mean you have pointed out the differences, in paragraphs 1 and 2, between 61 and 62A and B?

Mr. Sonnett: May I suggest that I called this to the attention of the Master because this was the point that disturbed me. When I asked Mr. Davis whether there was another letter to the Stock Exchange referred to at the top

of 62A other than Exhibit 61, and was informed by Mr. Davis that there was not, I then called attention to the fact that 62A was a false statement, and the Master did consider that, I believe, and disposed of it.

My application was that by reason thereof, and since these are Hughes Tool documents, I be supplied, on behalf of TWA, with any and all press releases issued from Chester Davis' office on behalf of Hughes Tool Company.

Mr. Bromley: Maybe I was asleep, but I thought your only point was in the heading.

The Special Master: The language was recited to the reporter right here. I don't know whether you are hearing what is going on or not, Judge Bromley, but it was recited [fol. 9299] in detail by Mr. Sonnett in his objection, and it was recited by me.

Mr. Sonnett: May I—

The Special Master: And I inquired directly to Mr. Davis about it.

Mr. Sonnett: May I, on behalf of TWA, apologize for the low level of my voice. It is true that I have had my back toward Judge Bromley. It is also true that because of fatigue my voice is low. So to the extent that I have contributed to the confusion, I apologize. The fact, however, is very clear, that one of two things is necessarily true. Either a false statement was made to the Stock Exchange on May 31st, or a false statement was made to the press on May 31st, and in any event, a false statement was made to the press on May 31st on a highly material issue. That was my point, and I want all of the documents which constitute press releases from the office of Chester Davis as counsel for Hughes Tool Company. I think I am entitled to have them.

Mr. Bromley: I must apologize to the Master and to you, because I did not hear either one of you point out the many [fol. 9300] discrepancies which occur both in paragraph 1 and paragraph 2.

Mr. Stewart: Mr. Special Master, I believe there are still other discrepancies between the various documents which I believe Mr. Sonnett did not point out. I have reviewed them with Judge Bromley briefly, and there are several inconsistencies between the various exhibits.

I believe Mr. Sonnett mentioned perhaps the principal one.

Mr. Sonnett: One at a time, I always believe in. I think the record is pretty clear.

Mr. Davis: Now, Mr. Special Master, may I say that all these statements on the record have taken a great deal of time.

I don't think they furthered the discovery of the facts from this witness.

Mr. Settles, who handled this matter, and who is not now associated with me, will be available at the appropriate time to explain to these interested gentlemen what actually happened, and when they find out what the facts are they will find that, as with their other general accusations, they are baseless.

Mr. Sonnett: I think on the basis of that statement we [fol. 9301] are entitled to know right now whether Mr. Davis did or did not approve the press release which is Exhibit 62A and the statement which is 62B at the time.

The Special Master: I will overrule that. Let's proceed with the examination of the witness.

By Mr. Davis:

Q. Mr. Tillinghast, I hope that you haven't forgotten the testimony that you were giving prior to these colloquies from your counsel and others. Have you?

A. No.

Q. My question to you now, so the record may be entirely clear, is whether or not Defendants' Exhibits 62A and 62B came to your attention prior to today.

A. I have already testified to that, Mr. Davis.

Q. Would you mind repeating it, please?

A. Not that I recall.

Q. Would you recall it if it had?

A. Not necessarily.

Q. You say that Defendants' Exhibit 61 came to your attention, you remember that?

A. I said, Mr. Davis, that I either saw 61 or was advised of its contents. I am not absolutely sure that I have seen [fol. 9302] 61, but the substance of it is familiar to me.

Q. Do you recall who called it to your attention?

A. No. It may have been that I saw it, it may have been Mr. Leslie, it may have been Mr. Rowe, it possibly might have been Mr. Wadsworth.

Q. You have no recollection as to how a letter to the Exchange came to your attention which is not now included in your files?

A. I have—the only recollection I have is what I have already testified to.

Q. Will you identify, on the basis of what you knew in June 1961, the period June 10th to June 16th—what did you know at that time which is the basis for the testimony that you gave at the bottom of page 3669 and the top of page 3670?

A. Mr. Davis, I have testified to that as fully as my recollection permits.

Q. Based upon that testimony, is that the complete basis for your conclusion that that was a fact which you considered as indicating the lack of good faith in the offers made by the Tool Company by its letter of June 10th?

A. I have testified, Mr. Davis, as fully as I can as to the [fol. 9303] reasons why I felt this was not in good faith.

Q. I understand that, Mr. Tillinghast, but what I want you to tell me now is whether or not you have now fully disclosed all of the facts that you had in the period June 10th to June 16th to support the answer you gave at page 3669 of the transcript.

A. As far as I can presently recall them, I have.

Q. You believe that if you had some more time you could recall some more?

A. I have no specific reason to think so. I might.

Q. Is there anyone in particular with whom you would like to have an opportunity to discuss the matter so as to refresh your recollection?

Mr. Sonnett: Mr. Rankin, I think counsel ought to be directed to stop this sort of nonsense. He has gone through this exercise a hundred times. It is very naive, improper, and a waste of time. It is about time he stopped arguing with the witness or playing it up to a jury, or whatever he thinks he is doing, and put questions seeking information. This is completely wasteful of time.

He is worried about Hughes. Every time he puts an-
[fol. 9304] other dollar's worth of this sort of stuff on the record it is costing his client. I think he says 78 cents. I think his client is getting gypped.

The Special Master: Answer the question if there is anyone that you know of that might help you recollect more.

A. Not specifically, Mr. Davis.

As you well know, when one sits down, particularly with a number of people who have been familiar with events, and goes through them, discusses them back and forth, one's recollection is inevitably refreshed, and if I sat down with all the people involved in these events and asked them their recollection, told them mine, perhaps other things would come to mind.

But I have no specific reason to think beyond that any particular person would refresh my recollection.

Q. I am interested in the persons with whom you discussed what you considered to be evidence of the bad faith on the part of the Tool Company with respect to its proposals of June 10th.

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[fol. 9322] A. Mr. Davis, I will repeat once again that I don't recall any specific review of facts and circumstances that led anyone to the conclusion that this was not written in good faith.

I do recall that I discussed with both Mr. Reed and Mr. Rowe the fact that this letter appeared to be written for the record and to put TWA on the spot to serve as a means of impeding the Boeing program, and my recollection is that we all agreed that this was the case, and I have no recollection that anyone went into detail and said "Now, you tell me why it is that you think this is the case."

Q. In your answer, Mr. Tillinghast, you said you don't recall any specific review of the facts and circumstances, and I would be satisfied if you could give me any statement of facts and circumstances, whether or not you would regard it as a specific review.

A. I recall no statement of the facts and circumstances.

Q. Thank you.

[fol. 9323] Now you say that you did discuss with Mr. Rowe and Mr. Reed the fact that this letter appeared to "put TWA on the spot."

Will you describe what you said or they said indicating that this letter would put TWA on the spot?

A. Well, without at the moment distinguishing between Mr. Reed and Mr. Rowe, what I said, in substance, was that I felt this was written for the record, that it was an attempt to create a situation where TWA would seem to be put in the position of refusing to accept a proffer of a very substantial amount of equity unless it interrupted and interfered with its Boeing program, and that it seemed to me just another step in the Davis campaign which had then been going on for some period of time, and that it was not a genuine attempt to work out a basis of additional equity.

I also said, and they agreed, that we had to deal with it as if it were genuine, and had to keep the doors open and the means open by which, if in fact it did turn out to have substance, we would exhaust the matter on its merits.

Q. Did you understand that the only condition to the offer of proposal No. 1 was a termination of the voting trust?

[fol. 9324] A. That was a stated condition. There were obviously a good many other questions involved in it, Mr. Davis. This was not a situation where we just could say "I accept," and we suddenly had a $100 million of equity. You had inherent in this numerous questions of the form of the equity, the price of the equity, what the terms would be, a dozen things that weren't covered here, but the only specific stated condition was the termination of the voting trust or—and the fact that it be acted upon within ten days or any agreed upon extension thereof.

Q. In this discussion you had with Mr. Rowe and Mr. Reed did they point out to you that if the proposal was acceptable to TWA, TWA would be free to supplement its jet fleet either with Boeing aircraft or Convair aircraft or any combination?

A. Well, they didn't, as I recall it, particularly point that out, Mr. Davis. The letter so states.

A. Well, they didn't, as I recall it, particularly point that out, Mr. Davis. The letter so states.

We were, however, I was, deeply conscious of the fact that you were at the time turning heaven and earth to try to prevent the Boeing deal, and very frankly, I just didn't believe what it said.

Q. Did you discuss in what way these proposals to TWA constituted or would constitute an interference with the [fol. 9325] Boeing program.

A. Well, it seemed to me perfectly obvious that if you got into a discussion of the termination of the voting trust, that one of the possibilities, very real possibilities, inherent in that was further delay of our Boeing financing, and my feeling was that this was an attempt, if you will, to drag a red herring across the path and get TWA into a position where it was discussing things that would interfere and delay—interfere with and delay consummation of its Boeing financing, and ultimately cause the abortion of the Boeing program.

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[fol. 9922]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 61-2324

TRANS WORLD AIRLINES, INC., Plaintiff,

—against—

HOWARD R. HUGHES, HUGHES TOOL COMPANY and RAYMOND M. HOLLIDAY, Defendants.

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120 Broadway,
New York 5, N. Y.

Transcript of Oral Argument—June 4, 1962

Before: Hon. J. Lee Rankin, Special Master.

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[fol. 9939]

ARGUMENT RE TWA's INTERROGATORIES

Mr. Sonnett: In connection with our interrogatories, Mr. Rankin, may I make one suggestion at the outset. Interrogatory 4 names various individuals who, based on our information, may be presumed to have information on the subject matters involved in the interrogatories.

In the opposing papers it is said by the Hughes Tool Company, to be sure, not under oath, but it is said, that one of these individuals is unknown to TWA, that is, Sam Barber, that two of them, three of them, rather, are former employees, Robert Marsh, Grant Horr, and Joel Boyce, and as to those individuals, it seems to me that if the Hughes Tool Company makes a response under oath to the effect that these are former employees, and that as to Barber, he was not and is not an employee, or known to them, that that eliminates them from the list, because in the light of such a statement under oath I would think that there is

little more we can do about those particular people at this time.

With respect to Michael Conrad and Robert Maheu, the [fol. 9940] opposing papers take the position that they are consultants to TWA, and therefore, although their duties include the furnishing of information to TWA, therefore TWA should not be required to obtain information from them.

Mr. Barr: Do you mean Tool Company instead of TWA?

Mr. Sonnett: Excuse me. Did I say TWA?

Mr. Davis: I think you were right.

Mr. Sonnett: If Maheu was working for us, tell him to deliver his reports to us tomorrow morning.

Mr. Davis: Why don't you ask him?

Mr. Sonnett: I have been trying hard to get them.

I don't think it is necessary, unless the Master wishes it, to take any great amount of time on the question of whether Conrad and Maheu, who are described as consultants to Tool Company, are under a duty to supply to Tool Company information of this type if Tool Company asks for it.

As to the other individuals named in interrogatory 4, no question is raised by Tool Company.

The opposing papers I think raise one question which [fol. 9941] requires me to discuss to some extent TWA's efforts to find Mr. Hughes, because they contend in the opposing papers that where Mr. Hughes may have been is not a proper matter for discovery by us now.

I think that position is not well founded. Fundamentally, because of the nature of Mr. Hughes' movements, and his habits, where he may have been in the past may give us some very important guide to where he may be now or may be in the future.

Without attempting to describe in detail or at length our efforts to find Mr. Hughes, I think it appropriate to inform the Master that we have conducted detailed investigation in California for an extensive period of time; we attempted to do this quietly and effectively without publicizing our search for Mr. Hughes in the newspapers, and without attempting to embarrass him in any respect publicly by our search.

We employed a former FBI man who, with, at times, as many as 25 former agents, engaged in the effort to find Mr. Hughes in various places in southern California.

In the course of that work, investigation was conducted [fol. 9942] at the Beverly Hills Hotel, at the Hughes Production Company at 7000 Romaine Street, at the Rancho Santa Fe in California, at the home there located, and also at the inn there located, and we conducted investigation at two places in Sunset Boulevard in Los Angeles. We have conducted investigation in Palm Springs in two locations, we conducted investigation at 600 Muirfield Road in Los Angeles, we conducted investigation at Mulholland Drive, Coldwater Canyon, a home there in Hollywood Hills, and all of these efforts by the private investigators were unsuccessful.

Similar efforts were made by United States Marshals duly equipped with appropriate process to find Mr. Hughes at various of these locations.

Those efforts also were unsuccessful.

The difficulty of locating Mr. Hughes at any given moment in time I think is illustrated by one incident that developed in Palm Springs, where our investigator arrived in the morning and was told by the butler at the particular home where Mr. Hughes was said to have stayed the preceding night that the butler thought he was going to stay all night, but when the butler went back to his room in [fol. 9943] the morning Mr. Hughes had disappeared.

We conducted similar investigation at various places in Florida as well, based on information that came to us from time to time.

There have been reports, for example, that Mr. Hughes was visiting Mr. Gar Wood at an island south of Miami, and there was some reason to believe that for a period of time he was there.

There were a series of reports about Mr. Hughes having been in Mexico for part, at least, of the time that we have been trying to serve him.

We conducted investigation in Mexico City and in Acapulco, and several other places adjacent thereto.

We had reports at times that Mr. Hughes had been seen in and around Phoenix, Arizona. Those were investigated, and we were unable to locate him.

We have made a series of efforts to find Mr. Hughes in New York. We have had reports he has made surreptitious periodic visits to New York, stays briefly, and disappears.

Now, as to where Mr. Hughes may now be, the record is replete with statements by Mr. Davis, by Mr. Cook, and [fol. 9944] by Mr. Holliday—I have the record references here—statements made in this proceeding, in which Messrs. Davis, Cook and Holliday disclaim any knowledge as to where Mr. Hughes is.

In the record before the Special Master it is established that there is at least one address to which mail is customarily sent by people who are trying to reach Mr. Hughes, and that is 7000 Romaine Street, the communications center.

The Special Master will recall that at one time I wrote Mr. Hughes a letter there asking whether he would be prepared to accept a subpoena.

I also sent copies of that letter to the Beverly Hills Hotel and to the Hughes Tool Company in Houston, Texas. I had a reply from Nadine Henley saying that she picked up the mail at Beverly Hills, and she wasn't currently in touch with Mr. Hughes, but would bring the matter to his attention when she heard from him.

[fol. 9945] The Master will recall that pursuant to his direction Mr. Davis wrote to Mr. Hughes, in which a certified copy of the order for production of documents was forwarded. That letter went to 7000 Romaine Street, but so far as I know, Mr. Davis has not yet informed us whether he had an answer to that letter. If he has it, I would like to see it. It should be made a part of the record.

Finally, there is now evidence that Mr. Hughes himself in financial transactions has used and designated 7000 Romaine Street as his mailing address. He did this in a promissory note when he borrowed $11 million from the Bank of America, according to documents recently produced.

So that our problem is not an easy one, and it seems to be a problem which Mr. Davis and Mr. Cook and Mr. Holliday

have had as well as counsel for TWA. With that in mind, we constructed these interrogatories so as to ascertain under oath the information that officers, directors or attorneys of Toolco may have concerning where Mr. Hughes was in the 30 days preceding the expected date of the answer to the interrogatories, where he was or will be on the date of [fol. 9946] the answer, and where he is expected to be, so far as they know, in the period up to July 1st.

In the objections one point was made which seemed to me to have some substance, and that is a point concerning interrogatory 7. That interrogatory inquires as to whether any of Toolco's employees, agents or representatives, including those employed in Los Angeles, who, during the year preceding the date of the interrogatory, performed services of a personal nature or otherwise directly for Mr. Hughes.

The point is made, the objection, that this might require a rather widespread interrogation of all of Toolco's employees. I think that point has some validity, and accordingly, in our papers, we have proposed modifying interrogatory 7, to limit the inquiry to those employees, agents or representatives who, to the knowledge of any officer or director or attorney for Toolco, have, during the preceding year, performed personal services of any nature for Mr. Hughes.

I think that eliminates what otherwise was a fair point as to the scope of the interrogatory.

[fol. 9947] The reason we selected July 1st, although it seemed at the time of the interrogatory, which was May 2nd, July 1st seemed to be quite a way away, tending to reach 60 days, prospectively is what we had in mind, we are now into June, so I think that when the answers are made they ought to cover 60 days from the date of the answer.

The delay is a matter not having been the fault of TWA. But the reason we selected July 1st as a minimum date, looking at it prospectively, is that on that date amended rules of the District Court of the Southern District will take effect, and under the amended Rule 4, as the Master undoubtedly knows, the old rules of this district on priority

have been radically changed, and priority may be obtained by a defendant only during the first 40 days of the pendency of the case, after which the rule contemplates concurrent depositions to be worked out by counsel or some schedule in which the concept of priority by reason of service of notice has no place, and it is our intention, as soon as we are in a position to do so, knowing, as I hope we will learn this way, where Mr. Hughes can be served, to serve him with a subpoena returnable on July 1st, or at such other time as the [fol. 9948] Master should designate under the new rule, and to proceed then, I hope, or in the meantime, to work out a new schedule of depositions with counsel for Toolco and Mr. Holliday so that we can progress the case.

The disclosure of information as to where Mr. Hughes can be served therefore is an essential prerequisite to our carrying out that program, and I would therefore urge that the Master direct that the answers to these interrogatories be made very promptly, the interrogatories themselves having been served on May 2nd.

I think that completes what I have to say, unless you have some questions, Mr. Rankin.

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[fol. 9989] RULINGS BY SPECIAL MASTER ON TWA'S INTERROGATORIES

The Special Master: I will overrule the motion to strike the answer of Mr. Holliday. I further order and direct that unless Mr. Hughes authorizes his counsel or some other person in writing, in form satisfactory to counsel for TWA and the Special Master, to accept service of a subpoena to appear for the taking of his deposition on or after July 1, [fol. 9990] 1962, at such time as it may properly be reached under the orders of the Court, by June 20, 1962, that Hughes Tool Company answer the interrogatories as presented, except as modified by the statements of Mr. Sonnett this morning.

I did not direct that Mr. Holliday personally have to answer the interrogatories, because I interpret the interrogatories as reaching such information as Mr. Holliday has.

Mr. Barr: If this matter is concluded—

The Special Master: I want to make it clear on this record that where I provide that the order will not require the answering of the interrogatories if Mr. Hughes authorizes the acceptance of a subpoena, it is only a subpoena for his appearance for the depositions, and I am not requiring that he authorize the service of process in this case upon himself. I want to make that clear in the record.

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[fol. 10961]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. 61-2324

TRANS WORLD AIRLINES, INC., Plaintiff,

—against—

HOWARD R. HUGHES, HUGHES TOOL COMPANY and RAYMOND M. HOLLIDAY, Defendants.

Continued Deposition of Plaintiff Trans World Airlines, Inc., by Charles C. Tillinghast, Jr., Its President

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[fol. 11094] By Mr. Davis:

Q. Now, I would like to have you describe what was said by any of the directors there present in connection with the remarks or presentation that you had made?

A. Before I say that, Mr. Davis, I should say one other thing that I said, and that was that I thought it would be a serious mistake were we to interrupt consummation of the Boeing program for the purpose of chasing what probably would turn out to be a will-o'-wisp so far as these so-called proposals of the Tool Company were concerned.

At this point I have some difficulty in recalling who said what, but I remember that Mr. Leslie discussed and described the inquiries that he had made of the financial institutions and Dillon, Read relative to the ability to obtain

financing in the event of the termination of the voting trust, [fol. 11095] and read the letters that had been received.

Q. In your answer I think you said that you advised the directors that in your opinion it would not be advisable to interrupt or interfere with the Boeing program in order to chase a will-o'-wisp, or something.

Were you referring to the proposals contained in the June 10th letter?

A. Yes, I am.

Q. You understood at the time that proposal No. 1 did not require TWA to change its mind with respect to the Boeing program?

A. Yes, I am quite aware of that, Mr. Davis, and I am equally aware of the fact that had we set out to negotiate something of that magnitude, it would have held up for a matter of months' consummation of the Boeing financing, and unless and until we had something a lot more tangible than we had at that point, I wasn't about to recommend to the board that we interrupt and further jeopardize our Boeing financing at least so soon after having gone through the experience that we went through when the Prudential pulled out.

Q. Do you recall what comments or statements Mr. Breech made?

[fol. 11096] A. My recollection is refreshed by a reference in Mr. Duckworth's notes here, to the effect that he felt it was in the best interest of TWA to continue the present course until the Tool Company presents a complete financing program.

Q. What do you mean by "continuing the present course"?

A. Of proceeding with the Boeing procurement. I believe, if I recall correctly, that Mr. Breech pointed out that he had had a number of discussions, one with Mr. Odlum, and other discussions with other people whose identity I can't recall at the moment, suggesting that Mr. Hughes was prepared to do this or Mr. Hughes was prepared to do that, and in each case nothing came of it.

I believe he made the point if we interrupt the program we are on now, we wouldn't know whether we really have a new and different program, or don't, and he thought it would be a great mistake until we had—even to spend a

great deal of time and effort on the matter—until we had a complete program which we could accept or reject.

Q. Do you recall what Mr. Sessel said on the subject?

A. No, at the moment, Mr. Davis, I have no recollection of Mr. Sessel having said anything. Yes, I do. I am mistaken. I believe Mr. Sessel repeated what he had told me over the telephone about the Bank of America, in response [fol. 11097] to his inquiring, having said that under certain conditions they might be willing to lend money without the voting trust, but that it was his opinion that in fact it wouldn't be possible actually to find a basis for doing this, and that he thought that the answer of the Bank of America was understandably influenced by the fact that they were the bankers for the Tool Company as well as for TWA.

Q. Do you recall whether either Mr. Sessel or Mr. Breech referred to the meeting they had, or to a meeting on June 16th, that they had with Mr. Hagerty and the insurance company lawyers?

A. Not that I recall, Mr. Davis, because I had no recollection of such a meeting until the other day here when I saw the memo that referred to it.

Q. Do you think you could state with some certainty that neither Mr. Sessel nor Mr. Breech described to the board the meeting or a meeting with Mr. Hagerty in connection with this June 10th letter?

A. I can only say, Mr. Davis, that I have no recollection of it whatsoever.

Q. If you look at the minutes themselves, page 3 of Defendants' Exhibit 76, it states that you pointed out in connection with proposal No. 1 that "An extremely important fact was the effect that the acceptance of such proposal, [fol. 11098] including the condition that the present voting trust be terminated, would have on the ability of the corporation to obtain additional needed financing, particularly additional debt financing."

Do you recall what you said to the meeting that is reflected by that portion of the minutes?

A. As far as I can recall, Mr. Davis, I pointed out that the $100 million would not be sufficient to relieve us of the necessity of institution financing, not only for the present

program; but for any short-range jet program that might be coming along.

I thought it vital in considering this thing to look at the totality of TWA's financial needs, and the possibilities of satisfying those needs if we went the route being proposed by the Tool Company.

Q. As I recall your prior testimony, you personally had not had any communication with the lending institutions in connection with this proposal No. 1, isn't that right?

A. Except as I have already testified.

Q. As I recall your prior testimony, you had this report from Mr. Leslie but you had not personally communicated with any representative of any lending institution?

A. I don't think that is correct, Mr. Davis.

[fol. 11099] Q. But you adverted to your understanding as to the attitude that the lending institutions were taking in connection with proposal No. 1?

A. I am not sure I adverted to it at this particular point, but from the first time that I read the June 10th letter up to and including the present time, it has seemed to me obvious that in appraising the desirability from TWA's standpoint of this proposal, one had to look at the totality of TWA's probable financial needs, and possible means of satisfying them, and that until and unless one did that, he couldn't possibly form a considered judgment on this so-called proposal.

Q. In connection with the remarks that you made, neither Mr. Breech nor Mr. Sessel supplemented those remarks by whatever experience they had had in any discussions which they may have had with the lending institutions, is that correct?

Mr. Williams: You mean they didn't speak at the board meeting?

Mr. Davis: Yes.

Mr. Williams: Did they speak at the board meeting after you had made these remarks?

The Witness: Yes, I am sure that both of them spoke, and as I testified just a moment ago, I recall Mr. Sessel [fol. 11100] having spoken about the position of the Bank of America.

By Mr. Davis:

Q. I am referring now to the position of the insurance companies. He didn't refer to that?

A. Mr. Sessel?

Q. Yes.

A. I have no recollection of his having referred to the position of the insurance companies, but possibly he did.

Q. How about Mr. Breech?

A. I don't recall either Mr. Breech having referred to the position of the insurance companies or the banks, except I have a faint recollection that after Mr. Leslie had summarized the communications with the financial institutions, Mr. Breech remarked that in view of the position they were taking, it looked as if we are a long way from having anything that we could really deal with.

Q. Still referring to this page 3 of the minutes of the meeting, Defendants' Exhibit 76, in that same paragraph you notice the sentence which reads, "He," referring to you, "said that you had asked Mr. Leslie whether or not the corporation could arrange additional needed debt financing if the voting trust were terminated, as proposed in the [fol. 11101] letter of June 10, 1961, and that Mr. Leslie had reported that in his opinion this would not be possible under the circumstances."

Are you referring now to the June 19th report that you received from Mr. Leslie, which we have previously covered?

A. Yes, and my oral discussions with him.

* * * * * * *

[fol. 11189] Q. Give me your best recollection as to your discussions which you had with Mr. Reed?

A. I remember, Mr. Davis, one small thing relative to my discussion with Mr. Reed, which comes to mind, and that is I happen to remember remarking to him appreciating the generous statements you made about me at the bottom of page 8.

[fol. 11190] I believe I discussed with Mr. Reed, as well as Mr. Rowe, the question of whether this required a reply, or what should be done about it.

I remember expressing the view with which both of them concurred, that this was another Davis blast, and didn't really contain anything new.

I remember discussing with them the desirability of having any general town meeting of all these different people to discuss this matter, and concluding that no worthwhile purpose would be served by such a meeting.

I recall having expressed the view that this seemed to be aimed mainly at our Boeing deal, and that that was a management matter which ought to be dealt with by the management as such, and that we would be happy to discuss this with any representatives the Tool Company wanted to discuss it, but I doubted the wisdom of discussing what was largely a technical problem in some sort of a large meeting with diverse interests.

That is about as much as I can remember at the present time, Mr. Davis.

[fol. 11191] Q. You referred to Mr. Reed and Mr. Rowe together. Was this a meeting or conference with Mr. Reed and Mr. Rowe?

A. Not that I recall, Mr. Davis. My best recollection is that it was two separate telephone conversations.

Q. In other words, you had a telephone conversation with Mr. Reed and you had a telephone conversation with Mr. Rowe?

A. That is my best recollection, although I wouldn't want to be positive of that, because I had a variety of discussions with them during this period of time relative to this controversy, and most of the time I had separate telephone conversations with them, but I know there were at least a number of times when we met in my office and discussed some of these things.

Q. In essence, but independently both Mr. Reed and Mr. Rowe reached the same conclusion that you have described?

A. That is my recollection.

Q. In those independent telephone conversations, both Mr. Reed and Mr. Rowe agreed with you that the letter did not require a reply, is that correct?

A. I believe so, Mr. Davis, although I must say that is a little hazy in my mind, but I think that's right.

[fol. 11192] Q. Is it fair to say that you did not pay much attention to the letter?

A. No, I don't think it would be fair to say that, although I did have the distinct feeling there wasn't anything new in the letter, and that this was just more of the same.

Q. By "more of the same," you are referring to the May 19th letter?

A. I am referring to the whole campaign that had been going on since your first letter.

Q. Wasn't the May 19th letter the first letter?

A. Perhaps. I don't recall offhand, but if that was the first letter, that's correct.

Q. Do you recall whether it was in your conversation with Mr. Rowe or Mr. Reed that you discussed the desirability or lack of desirability of having a meeting with these diverse interests?

A. My recollection is that I discussed it with both of them.

Q. But I recall your prior testimony to be that the conclusion was reached that no useful purpose would be served in having a town hall meeting?

A. A town meeting.

Q. A town meeting?

[fol. 11193] A. That's correct.

Q. I am asking you if you recall whether that was something discussed in your telephone conversation with Mr. Reed or Mr. Rowe?

A. I believe I discussed it with both.

Q. You previously indicated that you also discussed or may have discussed it with Mr. Leslie and Mr. Cocke.

Will you describe what took place in connection with any discussion you may have had with those gentlemen?

A. Well, I have a recollection of Mr. Cocke having come into my office with his copy of this, having made some semi-facetious remark about Davis being quite a letter writer, or something to that general effect, and my having said something to the general effect, "I guess we will have to get used to reading all this material."

So far as Mr. Cocke is concerned, I don't remember much beyond that.

Q. You did not discuss with him the desirability of meetings with these diverse interests?

A. I don't recall any such discussion.

Q. What was the nature or substance of any discussion with Mr. Leslie?

A. I really don't remember offhand, Mr. Davis, just what is the substance of the discussion was with Mr. Leslie, [fol. 11194] although I am quite sure I talked with him about the letter, but just what was said I can't recall at this moment.

Q. Do you recall anything being said by any of these gentlemen with whom you discussed this letter as to the effect that it might have on TWA or its management or its operations?

A. I would hesitate to say, Mr. Davis, because it just isn't clear enough in my mind. I have the feeling that a remark was made by someone about this being part of the war of nerves, but I can't tell you with certainty who it was.

Q. Do you have any recollection of discussing it with any of the other directors of TWA—with Mr. Slack?

A. No, I don't believe I discussed it with Mr. Slack, because so far as I recall, he wasn't around at that time. The more I think about it, the more I think I discussed it with Mr. Sessel, and my recollection is that Mr. Sessel called me up after he had gotten it, and asked me if I had received a copy of it, and what did I think of it.

Q. And then what happened?

A. I believe I told him that I thought it was just part of your campaign to block the Boeing purchase, and beyond that I don't recall what the conversation was.

Q. Let me direct your attention to the paragraph which [fol. 11195] begins at the bottom of the first page of the letter, which reads:

> "It is the desire of Toolco to confer with you or your representative as soon as possible with the objective of working out an amicable solution wherever there may be a difference of opinion."

Do you recall discussing with anyone the desirability of arranging for such a conference?

A. I believe I discussed that with Mr. Reed and probably with Mr. Rowe, although I don't recall the conversation with Mr. Rowe particularly relating to this.

I believe Mr. Reed took the position that we should be prepared to sit down and discuss the matter if representatives of the Tool Company wished to do so, and I believe I told him that we would be happy to do so at any time if there was any real desire on the other part to sit down with us.

Indeed, as I recall it, it was later that week that we did sit down with you in connection with the 990 question.

Q. Are you referring to the June 2nd presentation relating to the 990s?

A. That's correct, yes. I believe that it was in connection with that discussion that we discussed the desirability of having sort of a town meeting discussion, and concluded [fol. 11196] that with as many people and as many diverse interests involved, in all probability it would lead to no fruitful result.

Q. Did you decide to reply to that letter of May 26th?

A. No, I don't think I did. As I recall it, and as I look at my calendar here, this is the day—the day I received this was the day on which I was very busy trying to arrange to replace the Prudential part of our proposed financing program.

The next day was Memorial Day. Unless I am mistaken, by Wednesday or Thursday we already had some more communications from you. We were receiving communications, as I recall it, faster than we were answering them, and then it was either Wednesday or Thursday that arrangements were made for a meeting on Friday.

If my recollection is correct, this letter was never really answered, and we just seemed to bounce from one communication and one discussion to another.

Q. When you refer to communications, insofar as written communications are concerned, are you referring to anything other than what you have already identified?

A. No.

Q. And in your reference to oral communications, are you referring only to those which related to the arrange- [fol. 11197] ment for the presentation to be made relating to the 990s, which took place on June 2nd?

A. No.

The Witness: Read that question back.

(The question was read)

A. As I testified several times before, Mr. Davis, I think Mr. Reed and Mr. Rowe were talking with you rather frequently, perhaps daily, during this period. I am referring to all of those communications.

Q. You are unable to identify those communications any more than you have already done?

A. That's correct, yes.

Q. Do you know if any of the other addressees of this letter communicated with the Tool Company or any of its representatives with respect to any of its contents, or this objective stated in the paragraph beginning at the bottom of page 1?

A. I think the voting trustees communicated with you, at least orally, through Mr. Reed. I don't recall if I knew the extent to which the financial institutions communicated with you.

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[fol. 11203] (Letter from Mr. Rowe to Mr. Davis, dated June 8, 1961, marked Defendants' Exhibit 81 for identification, as of this date.)

Q. Do you have what has been marked as Defendants' Exhibit 81 before you, Mr. Tillinghast?

A. Yes, I do.

Q. Can you identify that as a letter by Mr. Rowe on behalf of TWA?

A. Yes.

Q. Do you recall any discussion with Mr. Rowe as to what was to be said in this letter?

A. I recall, Mr. Davis, discussing the last paragraph with Mr. Rowe.

Q. Are you referring to the paragraph which states in part "I believe it would be inappropriate for me to furnish at this time with all the detailed terms of the financing currently being negotiated by TWA with certain lending institutions"?

A. That's correct.

Q. And you adverted to that as the position of TWA in your prior testimony?

A. That's correct.

Q. Did you discuss it with anyone other than Mr. Rowe, by that I mean anyone else related to or associated with TWA?

A. Not that I recall.

[fol. 11204] Q. The portion of it which read "In view of the recent statement and attitude of Hughes Tool Company," that refers to the letters and communications that you previously had identified?

A. To the campaign which in my mind you were carrying on as evidenced in part by the letters and telegrams.

Q. When you say "evidence in part," you do not have in mind any other communication between the Tool Company or any of its representatives with TWA or any of its representatives, as part of that campaign which you have not already identified?

A. That's correct.

Q. Let me refer you to Defendants' Exhibit 39 for identification, which is a letter dated May 29th, to Mr. Holliday from you, with a copy to Mr. Davis. This was a letter from you to Mr. Holliday referring to Defendants' Exhibit 11F?

A. That's correct.

Q. And that is a May 29th letter which is referred to by Mr. Rowe in his letter, which has been marked as Defendants' Exhibit 81?

A. Yes.

Mr. Zeller: Let me hand this document to the Special Master because I think this illustrates a problem that has [fol. 11205] been occurring to me as we have gone through this.

As your Honor will see, that letter refers—that is a letter to Mr. Holliday as a representative of Tool Company, expressing Mr. Tillinghast's willingness to sit down with a representative of the Tool Company, obviously occasioned by Mr. Davis' letter of May 26th, which he was questioning Mr. Tillinghast about just before the recess.

The witness obviously didn't have that in mind. I don't see how he could keep in mind all of these documents.

Mr. Davis: It is not necessary. His answers have always been other than as previously identified. This was already identified in the record.

Mr. Zeller: As long as the record clearly so shows, because my point is a limited one. It is simply that as we

get these more or less omnibus questions, and I am not suggesting there is a better way to do it, I just don't know how we can avoid getting a record which is necessarily misleading if you look at just the four corners of the record.

Mr. Davis: I appreciate that. The problem is this. We have marked something for identification before. We have [fol. 11206] an understanding that to save time I was requested before that we never have to repeat anything previously identified or marked. I am not calling to his attention something previously identified and marked. My point is that I am trying to discover whether there is anything else which exists in the witness' mind other than what he has already testified to, which relates to this contention that these letters were part of an effort to interfere with the affairs of TWA.

Mr. Zeller: As long as we are clearly agreed on that. There won't be any quotations in the brief from the record on the failure to identify a particular document at a particular point in the deposition, that that indicates there wasn't anything else.

Mr. Davis: You can brief how you want to from the record. My only point is that I took the time and trouble to be sure that we have not overlooked anything in fairness to the witness for that very reason. But I am entitled to know from the chief executive officer of TWA what it is that he claims constitutes this conduct with which we are charged. I have tried to be fair about identifying all the [fol. 11207] documents which have been called to our attention and furnished to us. I won't guarantee that I won't overlook any.

You will have an opportunity, if you care to do so, at this time or later on to produce whatever you want to produce.

The Special Master: Are you making an objection, Mr. Zeller?

Mr. Zeller: No, sir, I am not. I wanted to call this to your attention and counsel's attention as a problem that we are faced with because of the magnitude of the documents primarily.

Mr. Davis: That is one of the reasons why it takes so much time. Your partners think I ought to do it in two days.

Mr. Zeller: I agree with him.

By Mr. Davis:

Q. The second area specifically mentioned on behalf of Toolco in Exhibit 11F appears on page 8, which refers to "Independently of the outcome of the Boeing purchase, another matter which requires discussion is the seventeen Convair jet aircraft."

By the seventeen Convair jet aircraft, you understood it to refer to the thirteen 990s and the four 880s?

[fol. 11208] A. That's right.

Q. And it was that matter which was the subject of a presentation on June 2nd? We have identified the minutes of that conference on June 2nd.

A. Without conceding the accuracy of your characterization, yes.

Q. The next item specifically referred to is the question of your employment contract. It is referred to in paragraph 3?

A. That's correct.

Q. You previously said that you recalled that there was some discussion of that with Mr. Reed?

A. No, I don't think I did so testify.

Q. Or Mr. Reed made a passing reference to it?

A. I think I made a passing reference to it. I might say when I say "it," not to the employment contract, but to the kind words of the first sentence of paragraph 3.

Q. Was paragraph 3, as you view it, any part of the alleged interference by the Tool Company with the affairs of TWA?

A. I just think this whole thing was part of a war of nerves, a campaign to put pressure on TWA to get TWA to forego the Boeing program.

Q. In other words, when you identified this letter which [fol. 11209] nas been marked Exhibit 11F, as part of the interference into the affairs of TWA, you do not have in mind any particular part of the letter, it is the letter in its entirety, is that correct?

A. Yes, I think the letter in its entirety was a calculated pressure move to bring about the interruption of the Boeing program.